

THE REGULATION OF  
MEDICAL PRACTICE

---

THE SUPERVISION  
OF HOSPITALS

LEGISLATIVE  
RECOMMENDATIONS

*to the*

GOVERNOR OF OHIO

*Published by*

THE CLEVELAND HOSPITAL COUNCIL

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CLEVELAND, OHIO

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“We (the medical profession) have in the last forty years been assuming a burden which does not belong to us. To this extent we have pauperized the public by depriving them of their own responsibility. As soon as this responsibility and duty is returned to the people, where it belongs, the better it will be for the public and the profession.

“DR. FREDERICK R. GREEN,  
“Of the American Medical Association.”

“The greatest need of Ohio in the hospital field today is the establishment of a central bureau in some State Department, preferably in the State Department of Health.

“ROBERT G. PATERSON, Secretary,  
“Ohio Society for the Prevention of Tuberculosis.”

State of Ohio  
Executive Department

March 21st, 1917.

Dear Sir:

The present Assembly seems to have been confronted with many problems having to do with public and private hospitals, medical licensure and medical education. As one result of the deliberations of some of the various standing committees, it has been suggested that there is a considerable lack of available information relative to these matters and the laws pertaining to the same, and I have been urged to appoint a voluntary committee to study the subjects involved. I therefore wish to appoint such a committee to consist of two members representing organizations and professions which seem to be most interested. I am therefore asking the following to serve on this committee:

Mr. Howell Wright, Secretary of the Cleveland Hospital Council,  
and Mr. George V. Sheridan, Executive Secretary of Ohio State Medical Association.

I trust you will be able to serve upon this voluntary committee and that you will notify me of your acceptance of this appointment at an early date.

I suggest that you make the following survey and report to me with any findings or recommendations you desire to make, if possible, on or before January 1, 1919:

*First*—The present system and laws relating to the incorporation, licensing, inspection, supervision and regulation of public and private hospitals.

*Second*—The present system and laws relating to medical licensure and medical education, and the education and licensure of those who treat the sick public by systems of healing other than medical.

I further suggest that your committee make this survey in co-operation with the members and other committees of the respective organizations represented and that in your findings and recommendations you will endeavor to secure the co-operation and approval of the leading authorities of the State interested in such matters.

Yours very truly,

(Signed) JAMES M. COX.

# Ohio Senate

## Columbus

HOWELL WRIGHT  
25TH DISTRICT  
CLEVELAND

### COPY

Hon. James M. Cox,  
Columbus,  
Ohio.

My dear Governor Cox:—

In accordance with your letter of March 21, 1917, I have the honor to transmit herewith a report, with legislative recommendations, pertaining to Medical Practice and Hospitals. The conclusions are based upon work extending over a year and a half and a large amount of data gathered during that time.

Many people have given valuable advice and assistance. Officials of the Ohio Hospital Association co-operated generously. Members of the Cleveland Hospital Council, and especially its Legislative Committee, have counseled particularly in the study and presentation of the hospital recommendations. State officials and representatives of the various healing professions have responded promptly to requests for information. Mr. Sheridan, the other member appointed on the Committee, has not participated in the report for the reasons expressed in the following letter.

This report will be published by the Cleveland Hospital Council. Copies will be sent to members of the Legislature, to members of hospital, nursing and medical organizations and others interested.

Respectfully yours,

HOWELL WRIGHT.

Jan. 4th, 1918.

COPY

December 23rd, 1918.

Governor James M. Cox,  
Executive Offices,  
Columbus, Ohio.

My dear Governor:

When, under date of April 6, 1917, you requested that I co-operate with Senator Howell Wright in the preparation of a report covering the present forms of regulating the healing profession, I accepted with pleasure.

Shortly thereafter, due to our entrance into the war, it became necessary for me to abandon most of my ordinary work and to assume new duties connected with the mobilization of physicians for military and civilian purposes. My connection with medical organizations and my familiarity with the medical profession made it most necessary for me to abandon all work not directly connected with mobilization.

As I was not able to estimate the time that this would require I did not advise you of my inability to proceed with this work, hoping that the situation would permit my later participation. Realizing its importance, I requested Mr. Wright to proceed independently of me.

My work in connection with medical mobilization and demobilization has continued up to the present and I, therefore, have not had an opportunity to participate with Mr. Wright in the collection of the data upon which he has based his recommendations; nor have I had an opportunity to study the data he assembled.

The report which he will submit to you is, therefore, solely the result of his personal investigation and his conclusions and recommendations are, of course, his individual expression.

I request that you will accept my explanation of my inability to participate in this important work and will not consider my refusal to sign same as having any bearing whatever upon the report submitted by Mr. Wright. I am not even sufficiently familiar with the situation to comment upon the recommendations he has made.

Sincerely yours,

GEORGE V. SHERIDAN,

GVS:MG.

Executive Secretary.

# Hospital Recommendations

## PRELIMINARY STATEMENT

The study of Ohio's present system of laws relating to hospitals and the work of outlining constructive suggestions which will be fundamentally useful in obtaining much needed health and welfare objectives has been somewhat difficult. Useful local, general information has been easily secured but little has been found in the laws and experience of other states of use or adaptability to the Ohio situation. The scope of the inquiry has been of necessity limited. No study of Ohio's county infirmary system has been attempted; (such a study has been made by the Health and Old Age Insurance Commission and its findings are commended to your attention) no study of our tuberculosis hospital and dispensary system has been undertaken because its development is far behind the legislative program enacted by the 82nd General Assembly; no study has been attempted of the present system of management of the state institutions, many of which are hospitals, by the Ohio Board of Administration. The report and recommendations deal in particular with the present system and laws relating to the so-called private hospitals with especial regard for their relation to the State. In many respects both are elementary.

Numerous proposals have been considered as the basis for constructive executive and legislative action. Two fundamental lines of action and procedure are possible:—

*First*—The State should adopt a system of State control of private, charitable hospitals and dispensaries to the extent that minimum standards of operation should be provided, as well as a corps of investigators and inspectors, whose duty it should be to enforce these standards under the direction of some State department.

*Second*—The State should adopt a system of reasonable supervision and regulation of private, charitable hospitals and dispensaries to the extent that the best interests of the public health and public welfare in general shall be protected.

The State control proposal can be discarded with little discussion. Little can be found in the experience of other states that would justify even a limited application of it in Ohio, even if more than a few people could be found in favor of it. The State has proceeded already too far along the line of the other extreme. The need now, therefore, is such executive and legislative action as will help to bring about a mutually helpful relation between the State and the hospitals. It should be a relation "of that intimate and co-operative nature which will more effectively make for the best interests of all concerned." The second plan, therefore, is recommended and the carrying out of the following specific recommendations should be a step in that direction.

This recommendation is made in recognition of the fact that the State itself has duties to perform as well as obligations to meet toward the hospitals and dispensaries and over which it has responsibility and supervision. These obligations can best be met—not by sending a horde of meddling investigators and inspectors or chief examiners from half a dozen different departments, whose authority is not clear and whose duties and responsibilities conflict and over-lap, into the hospitals of the State—but by centralizing such supervisory authority as is necessary in

the hands of a single state department and the adoption by that department, within legislative limits, of sound, constructive hospital policies, not in the especial interests of any particular profession but solely in the interests of public welfare.

These recommendations should in no way conflict with the legislative proposal to re-organize Ohio's county health administration system as advanced by the Ohio Health and Old Age Insurance Commission. If that proposal is enacted into law it would result in closer working arrangement between the county and State health departments. And if the State department is given additional authority as to hospitals as recommended herein, the county health officer could, as directed, act as the representative of the State Department of Health in various matters pertaining to hospitals. The county health officer plan as proposed by the Health and Old Age Insurance Commission is, therefore, highly commended.

# Hospital Recommendations

## RECOMMENDATION

I. The State Department of Health should, under authority already vested in it, create a Hospital Bureau.

For complete discussion of recommendations see page 12.

## DIGEST OF DISCUSSION

"The greatest need of Ohio in the hospital field today is the establishment of a central bureau in some State Department, preferably the State Department of Health." No extended argument is needed in support of this recommendation. State health activities are already centered in the Department of Health. Hospitals and dispensaries are an important factor in the work of protecting the public health. The proposal is consistent with the modern tendency in National and State health organizations to align hospitals with the health department. The Department already has authority to create such a Bureau.

## RECOMMENDATION

II. Legislation should be enacted vesting additional authority in the State Department of Health as follows:—

*First*—To define and classify hospitals and dispensaries.

*Second*—To require all existing hospitals and dispensaries—public or private, State, City or County—to register with the State Department of Health within sixty days after the passage of this Act; such registration to include name of institution, date of incorporation, if any, classes of patients cared for, names of controlling board and officials, and other similar information.

*Third*—To require all hospitals and dispensaries to report annually to the State Department of Health on uniform hospital report blanks provided by that department. The information to be reported should include, under "Work Done," the number of pay patients, part-pay patients and free patients, and public charges cared for each year, and the number of days of treatment given each group; the number of dispensary patients and accident and emergency patients; general information as to hospital beds, nursing, medical and other facilities; under the heading, "Cost of Work Done," should be included income from patients, contributions and capital income; under "Expenses" should be included Operating Expense, Corporation Expense, and expenditures for permanent improvements; and such other general information as the department may require.

*Fourth*—To transfer authority now vested in the Board of State Charities to inspect maternity hospitals or homes and lying-in hospitals to the State Department of Health.

For draft of proposed Act see pages 15-16.

For complete discussion of recommendation see pages 13-14.

## DIGEST OF DISCUSSION

*First*—It will be necessary to know what constitutes hospital or dispensary as a basis for a closer working relation between the State and such institutions. Our statutes do not now contain any such definition with the exception of an attempt to define lying-in hospitals and maternity boarding homes in Section 6227 of the General Code. Experience has proven that many difficulties are encountered when an attempt is made to enact legislation containing exact definitions of this kind. The other alternative is to give the proper State department discretionary authority to make such definitions and classifications. For purposes of the proposed legislation there can be no reasonable objection to giving such authority to the State Department of Health.

*Second*—Ohio has no accurate information regarding its hospital and dispensary facilities. Such information is a prime essential as a basis for any constructive plan to increase hospital facilities in the State; for sickness prevention activities, or as one basis for any plan for sickness or health insurance. This proposal practically amounts to a census of Ohio's present hospital and dispensary facilities.

*Third*—This proposal for annual hospital and dispensary reports would help to protect such institutions themselves against arbitrary action prompted by a recent decision of the Supreme Court in the case of Treasurer of Cuyahoga County vs. The Physicians' Hospital Association (Grace Hospital). For complete decision see pages 18-20.

For purposes of taxation the County Auditor will, of course, determine whether a private, charitable hospital is making "those who are unable to pay its first concern." Obviously no hospital can have objection to making such an annual report to the State Department of Health, which at all times will be available to County Auditors who are now charged with the duty of putting taxable property upon the tax duplicate.

The proposed plan, if adopted and properly executed, will result in accurate information as to the cost of hospital and dispensary maintenance and operation. Such information can be placed at the disposal of the Industrial Commission and used by that Department as the basis for determining its schedule of hospital fees and charges for hospital service rendered and paid for out of the State Insurance fund. It would forever end the day of the arbitrary fee schedule as now prepared by the Industrial Commission, and, furthermore, make it unnecessary for the Ohio hospitals to do "charity work" for the State.

*Fourth*—The State Department of Health already has authority to license and inspect maternity boarding homes and lying-in hospitals (Sections 6259-6271 and 6227) as now defined, but by another provision of the statutes (Section 1352) the Board of State Charities is also vested with authority to inspect these same institutions otherwise named. In spite of attempts to work out a joint plan of administration great confusion has obtained. This dual responsibility and lack of system has made effective results impossible. Obviously the department which has authority to license maternity hospitals should also have the sole authority to inspect them.

## RECOMMENDATION

III. The Legislature should adopt a resolution directing the State Department of Health to study the present hospital and dispensary facilities of the State and to make recommendations for such legislative action as is necessary to bring about a closer working relation between so-called private hospitals and dispensaries and the State; and such further recommendations as are necessary for the development of existing hospital and dispensary facilities to meet the needs of the sick.

For draft of proposed legislation see page 17.

For complete discussion of recommendation see page 14.

## DIGEST OF DISCUSSION

The State Department of Health should be the chief adviser of the Legislature in all matters pertaining to hospitals and dispensaries. Under the terms of this resolution it should obtain adequate information as to the hospital and dispensary needs of the sick and make recommendations which should be helpful to the Assembly in its consideration of legislative proposals dealing with such matters.

# Discussion of Hospital Recommendations

*(The recommendations are repeated and each is followed by general discussion.)*

## RECOMMENDATION

I. The State Department of Health should, under authority already vested in it, create a Hospital Bureau.

## DISCUSSION

State health activities are centered in the Department of Health. Hospitals and dispensaries are an important factor in the work of protecting the public health. More than ever before there is a tendency in National and State health organizations to align hospitals with the health department. It is probable that little opposition could be found in Ohio to working out the proper relation between the State and hospitals and dispensaries through the State Department of Health. The importance of this proposal to centralize such activities on the part of the State in the State Department of Health is well emphasized in a report on "State Health Resources and Needs," by Mr. Robert G. Paterson, Secretary of the Ohio Society for the Prevention of Tuberculosis. He states, "The greatest need of Ohio in the hospital field today is the establishment of a central bureau in some State department, preferably the State Department of Health." This probably is the consensus of opinion of hospital people in the State.

Under Section 1235 the State Department of Health already has authority to create a Hospital Bureau as one of its divisions. But legislative action is necessary to make it possible for the Department to proceed further.

## RECOMMENDATION

II. Legislation should be enacted vesting additional authority in the State Department of Health as follows:

*First.* To define and classify hospitals and dispensaries.

*Second.* To require all existing hospitals and dispensaries—public or private, State, City or County—to register with the State Department of Health within sixty days after the passage of this act; such registration to include—name of institution, date of incorporation, if any, classes of patients cared for, names of controlling board and officials, and other similar information.

*Third.* To require all hospitals and dispensaries to report annually to the State Department of Health on uniform hospital report blanks provided by that department. The information to be reported should include—under "Work Done" the number of pay patients, part-pay patients and free patients and public charges cared for each year and the number of days of treatment given each group; the number of dispensary patients and accident and emergency patients; general information as to hospital beds, nursing, medical and other facilities; under the heading "Cost of Work Done" should be included—Income from patients, Contributions and Capital Income; under Expenses should be included Operating Expense, Corporation Expense and Expenditures for Permanent Improvements; and such other general information as the department may require.

*Fourth.* To transfer authority now vested in the Board of State Charities to inspect maternity hospitals and lying-in hospitals to the State Department of Health.

## DISCUSSION

*First*—If, as universally conceded, it is for the best interests of the public health that there should be a closer working relation between the State and hospitals and dispensaries, obviously it will be necessary to know what a hospital or dispensary is. Some attempt is made in our incorporation statutes to distinguish between hospitals "for profit" and "not for profit," and Section 6227 of the General Code attempts to define lying-in hospitals and maternity boarding homes. Nothing can be found, however, in the statutes which defines hospitals or dispensaries. Experience in Ohio and other States has proven that many difficulties always arise when an attempt is made to enact legislation defining such institutions. This has been particularly true in Ohio with respect to the legal definition of maternity hospitals. The only alternative is to give the proper State Department discretionary authority to make such definitions and classifications. For purposes of this legislation there surely can be no objection to giving such discretionary authority to the State Department of Health.

*Second*—In a word, this recommendation means giving the State Department of Health authority to take a census of Ohio's hospital and dispensary facilities. Much information now available is based largely on estimates. Such information has been gathered independently by the Red Cross, the Health and Old Age Insurance Commission, the Ohio Society for the Prevention of Tuberculosis, and the Ohio Hospital Association. While the best information was secured by the Ohio Hospital Association, it is incomplete as to hospitals and contains little as to dispensaries. No complete and accurate information of this kind is in existence in Ohio; not even an alphabetical list of incorporated hospitals is kept in the office of the Secretary of State. Such information is a prime essential as the basis for any constructive plan to increase hospital facilities in this State; for sickness prevention activities or as the basis for any plan for sickness or health insurance. Both the war and the recent influenza epidemic emphasized the need of adequate information regarding such facilities. Hospitals and dispensaries undoubtedly will be willing to co-operate and assist the State Department of Health in securing this information.

*Third*—There are two important reasons for this recommendation: First, it would be a protection to the hospitals themselves against arbitrary action prompted by a recent decision of the Ohio Supreme Court (See pages 18-20 for decision in the case of Treasurer of Cuyahoga County vs. Grace Hospital). This decision should be carefully read by every hospital trustee and hospital official in the State of Ohio. This case has to do with taxation of hospital property, and the Treasurer of Cuyahoga County sought to sell certain hospital property for non-payment of taxes but was enjoined from so doing. In this decision, among other things, the Court says:

"The fact that" a public, charitable hospital "may receive pay patients without losing its character" as such "does not authorize it to receive pay patients in such numbers as would exhaust its accommodations so that it cannot receive and extend hospital service to the usual and ordinary number of indigent patients applying for admission under proper rules and regulations of the Board of Trustees, except, of course, the cases it has no facilities for handling" . . . "the first concern of a public, charitable hospital must be for those who are unable to pay. If, after taking care of these, it still has further accommodations, there can be no objection to making use of the same for pay patients in order to increase the fund which may be at its disposal for the benefit of the poor. It may be, however, that it cannot always nicely measure these demands. It is sufficient if it conforms its conduct along the lines of its experience as to the ordinary and usual demand made upon it by charity patients, provided always that it act in good faith and consistent with the purposes of its organization."

For purposes of taxation, who will determine whether the private, charitable hospital is making "those who are unable to pay its first concern?" The chief taxing official in each County, the County Auditor, of course. Obviously no hospital should have objection to making such an annual report to the State Department of Health, which at all times will be available to County Auditors who are charged with the duty of putting taxable property upon the tax duplicate. The proposed annual report plan, if adopted and adhered to, will afford necessary protection to the individual hospital.

Second, the Medical and Claims Department of the Industrial Commission needs such information reported annually as a basis for determining its schedule of hospital fees and charges, and for hospital services rendered and paid for out of the State Insurance fund. In the absence of such information the Industrial Commission is, of necessity, obliged to make an arbitrary schedule, with the result that the hospitals of Ohio are compelled to do "charity work" for the State. Lack of such information makes the hospitals subject in their claims to a Claims Department which is governed by an arbitrary schedule of fees. And this arbitrary system, arbitrarily enforced, will continue until the State adopts and requires of all hospitals a uniform reporting and accounting system. Then the hospitals can transact business with the Industrial Commission on the basis of "justice" to all concerned, instead of on the present basis of "charity."

Attached to this report is a Report Blank used by the Cleveland hospitals in voluntarily reporting annually to the Cleveland Hospital Council. It should be helpful to the State Department of Health in preparing its census and report blanks, as it contains the fundamentals of hospital accounting and reporting. Its classification of patients has been adopted by the American Hospital Association. (See pages 21-26.)

*Fourth*—Section 1352 of the General Code gives the Board of State Charities authority to investigate, by correspondence and inspection, the system, condition and management of.....maternity hospitals or homes, lying-in hospitals and places where women are received and cared for during parturition, as well as of institutions, whether incorporated, private or otherwise, which receive and care for children. Little, however, has been accomplished under this section with respect to this group of institutions, although the law has been effective as to others enumerated. One difficulty is that the definition of "maternity boarding homes or lying-in hospitals," as contained in Section 6227, is really no definition at all in that it does not distinguish between maternity hospitals as such and certain other institutions which care for children. But, in addition, it should be remembered that while the Board of State Charities has authority to inspect maternity hospitals or homes, lying-in hospitals, etc., the State Department of Health has, under Section 6259, authority to license maternity boarding homes or lying-in hospitals and to inspect them. This results in a dual responsibility and lack of system, which makes effective results impossible. An attempt has been made to bring about a working agreement between the two State departments, but this has proved unsatisfactory. Obviously the department which has authority to license such institutions should have the sole authority to inspect them. Legislative action is recommended as necessary to bring about the much to be desired change.

## RECOMMENDATION

III. The Legislature should adopt a resolution directing the State Department of Health to study the present hospital and dispensary facilities of the State and to make recommendations for such legislative action as is necessary to bring about a closer working relation between so-called private hospitals and dispensaries and the State; and such further recommendations as are necessary for the development of existing hospital and dispensary facilities to meet the needs of the sick.

## DISCUSSION

In the above recommendations the Committee has endeavored to deal with elementary fundamentals. The proposed legislation is limited in scope. In general it will give the State Department of Health sufficient authority to gather information and require public reporting and accounting. Wise use of this authority should result in a reasonable length of time in adequate information as to existing hospital and dispensary facilities in the State. From this information conclusions as to future needs and lines of activity should be forthcoming. The adoption of the resolution recommended would simply direct the State Department of Health to study its information and make definite recommendations to the Legislature as a basis for executive and legislative action.

## A Bill

To amend Sections 1352, 6259 and 6262, to add Supplementary Section 1236-6 and to repeal Sections 6257 and 6258 of the General Code relative to classification and inspection of hospitals.

*Be it enacted by the General Assembly of the State of Ohio:*

*Section 1.* That Sections 1352, 6259 and 6262 be amended and Supplementary Section 1236-6 of the General Code be added to read as follows:

*Sec. 1236-6.* The Commissioner of Health shall have power to define and classify hospitals and dispensaries. Within thirty days after the taking effect of this act, and annually thereafter, every hospital and dispensary, public or private, shall register with, and report to, the State Department of Health, on forms furnished by the Commissioner of Health, such information as he may prescribe.

*Sec. 1352.* The Board of State Charities shall investigate by correspondence and inspection the system, condition and management of the public and private benevolent and correctional institutions of the State and County, and municipal jails, workhouses, infirmaries and children's homes, . . . as well as all institutions whether incorporated, private, or otherwise, which receive and care for children. Officers in charge of such institutions or responsible for the administration of public funds used for the relief and maintenance of the poor shall furnish the board or its secretary such information as it requires. The board may prescribe such forms of report and registration as it deems necessary. For the purpose of such investigation and to carry out the provisions of this chapter it shall employ such visitors as may be necessary, who shall, in addition to other duties, investigate the care and disposition of children made by institutions for receiving children, and by all institutions including within their objects the placing of children in private homes, and, when they deem it desirable they shall visit such children in such homes, and report the result of such inspection to the board. The members of

the board and such of its executive force as it shall designate may attend State and National conferences for the discussion of questions pertinent to their duties. The actual traveling expense so incurred by the members and such of its executive force as it shall designate shall be paid as provided by Section 1351 of the General Code.

*Sec. 6259.* The . . . Commissioner of Health may grant licenses to maintain . . . *maternity hospitals or homes, lying-in hospitals, or places where women are received and cared for during parturition.* An application therefor shall first be approved by the Board of Health of the City, Village or Township in which such . . . *maternity hospital or home, lying-in hospital, or place where women are received and cared for during parturition* is to be maintained. A record of the license so issued shall be kept by the State . . . Department of Health, which shall forthwith give notice to the Board of Health of the City, Village or Township, in which the licensee resides, of the granting of such license and of the terms thereof.

*Sec. 6262.* The . . . Commissioner of Health and the Boards of Health of Cities, Villages or Townships shall annually, and may, at any time, visit and inspect, or designate a person to visit and inspect *the system, condition and management of the institutions and* premises so licensed.

*Section 2.* That original Sections 1352, 6259 and 6262 and Sections 6257 and 6258 of the General Code be, and the same are hereby repealed.

## Joint Resolution

Providing for a survey and study of hospital facilities by the State Department of Health.

*WHEREAS*, The recent influenza epidemic indicated in an alarming manner the inadequate facilities of this State for the care of the sick; and

*WHEREAS*, Many lives were lost which could have been saved with facilities for proper care; and

*WHEREAS*, The State should be prepared to meet any future recurrence of such situations; therefore,

*Be it resolved by the General Assembly of the State of Ohio:*

That the State Department of Health shall make a survey and study of the present hospital and dispensary facilities of the State and make recommendations for such legislative action as is necessary to bring about a closer working relation between so-called private hospitals and dispensaries and the State; and such further recommendations as are necessary for the development of existing hospital and dispensary facilities to meet the needs of the sick.

# Ohio Supreme Court Decision

P. C. O'Brien, Treasurer of Cuyahoga County, v. The Physicians' Hospital Association (Grace Hospital), 96 O. S. 1.

*A convincing argument in itself for annual reporting and accounting by hospitals and dispensaries:*

*First*—A corporation organized not for profit, may show by its charter, constitution and by-laws, or by oral evidence not inconsistent therewith, that it is organized solely for the purpose of administering a public charity, the foundation of which is derived from private donations.

*Second*—Property purchased with funds donated for public charity is impressed with the trust character of the funds with which it was purchased, and neither the property itself nor the income derived from its use can be diverted to private profit.

*Third*—The trustee of real estate purchased with funds donated for a specific public charity, cannot lawfully use the property so purchased for purposes other than the administration of the trust imposed by the donors of the fund.

*Fourth*—Where funds are donated for the purpose of establishing and operating a public charity hospital, and the trustee of such funds purchases property therewith and uses the same for the purpose of a hospital, such hospital must be conducted as a public charitable hospital.

*Fifth*—A public charitable hospital may receive pay from patients who are able to pay for the hospital accommodations they receive, but the money received from such source becomes a part of the trust fund, and must be devoted to the same trust purposes and cannot be diverted to private profit. (*Taylor, Admr., v. Protestant Hospital Association*, 85 Ohio St., 90, approved and followed.)

*Sixth*—A public charitable hospital cannot receive pay patients to such an extent as will exhaust its accommodations so that it cannot receive and extend hospital service to the usual and ordinary number of indigent patients applying for admission under proper rules and regulations adopted by the authority managing and controlling the operation of such hospital.

(No. 15222—Decided February 6, 1917.) Error to the Court of Appeals of Cuyahoga County.

On the 15th day of January, 1915, The Physicians' Hospital Association filed its petition in the Common Pleas Court of Cuyahoga County, averring that it is a corporation not for profit; that it is the owner of certain described real estate situate in Cleveland, Cuyahoga County, Ohio, upon which premises it is operating and conducting a public hospital, known as "The Grace Hospital," as an institution of purely public charity only; that the same is exempt from taxation under the laws of Ohio; that the hospital maintains thirty-seven beds for patients and is open to the public to the extent of its facilities; that all monies received by plaintiff are applied towards the discharge of its outstanding indebtedness and in the payment of current expenses and the advancement and promotion of the objects and purposes of its incorporation. That the Auditor of Cuyahoga County has, without authority of law, placed its property upon the tax duplicate, charged with \$367.10 taxes and penalty, and delivered the duplicate to the defendant, P. C. O'Brien, Treasurer of Cuyahoga County, who threatens to, and will, unless restrained by the court, proceed to advertise and sell the same for the payment of the taxes illegally assessed against it and the penalty illegally charged thereon for its non-payment, and prays that the defendant Treasurer be permanently enjoined from demanding and collecting from plaintiff said taxes and penalty, and enjoined from advertising and selling the property for the purpose of collecting the same, and for all other equitable relief.

The defendant, by answer, admits his official capacity as Treasurer of Cuyahoga County; that plaintiff is the owner of the property described in the petition; that there is charged against the property upon the tax duplicate the amount stated in plaintiff's petition, and denies each and every other allegation in the petition contained.

On November 3, 1915, the Court of Common Pleas found on the issue joined in favor of the plaintiff, and permanently enjoined the defendant Treasurer from demanding or collecting said taxes and penalty. Error was prosecuted to this judgment in the Court of Appeal, which court affirmed the judgment of the Common Pleas Court, and this proceeding is brought in this court to reverse the judgment of the Common Pleas Court and the judgment of the Court of Appeals affirming the same.

Mr. Cyrus Locher, Prosecuting Attorney, and Mr. F. W. Green, Assistant Prosecuting Attorney, for plaintiff in error.

Messrs. Chapman, Howland, Niman & Younger, for defendant in error.  
Donahue, J.

It is shown by the articles of incorporation, and conceded by counsel for plaintiff in error, that The Physicians' Hospital Association was organized as a corporation not for profit under the general corporation laws of this State. Neither the articles of incorporation nor the constitution adopted by it show that the purpose of the organization is a public charity. The written by-laws were not admitted in evidence, but the oral evidence fairly establishes the fact that this hospital is conducted as a public hospital, open at all times to the public, regardless of color, and at the service of any reputable physician of any school of medicine to the extent of its facilities, without limitation or discrimination as to the individual applicant, except cases of contagious diseases and mental diseases requiring restraint, for the handling of which cases the hospital has no facilities; and maternity cases, except emergency or surgical cases and cases where it is suspected that the hospital is being used to cover up criminal practices.

Where the patient is financially able, he is required to pay \$10 per week for ward beds and from \$15 to \$35 per week for rooms, depending upon the number occupying a room, or the size, location, or desirability thereof, and whenever the doctor sending the patient to the hospital certifies that the patient is not able to pay anything, no charge is made. Accident and other emergency cases are admitted without recommendation, regardless of ability of the patient to pay.

It also appears from the evidence that the expenses of operating the hospital are largely in excess of the revenues derived from patients; that the physicians who are members of this corporation, and one outsider, donated the original fund necessary for the purchase and equipment of the hospital, and that since that time further donations have been made, for all of which certificates of stock were not issued and cannot be issued under the charter.

Taken in connection with this evidence, the petition of the plaintiffs filed in this case, and which is now a matter of public record, the truth of which can never be challenged by The Physicians' Hospital Association, declares that this hospital is operated and conducted exclusively for charitable purposes. The trial court found these allegations to be true, and unless reversed by this court in this error proceeding, that judgment becomes *res adjudicata* of the facts so found. Therefore, notwithstanding the indefiniteness of this charter and constitution, this corporation is forever estopped from denying its eleemosynary character, and can never divert its revenues from the purposes of public charity.

The State is fully authorized to enforce the execution of the trust involved in the gift of the foundation fund, according to the intention of the donors and the purposes of the organization, and prevent the diversion of its funds to private profit.

While it appears from the evidence that the physicians who are members of this corporation receive pay for the treatment of patients who are sent there upon their recommendation, where the patient is able to pay, this cannot affect the character of the institution itself. The hospital purports to furnish only hospital accommodations and not professional treatment by physicians or surgeons. Whatever services are rendered indigent patients without charge is a matter of charity on the part of the physicians, who may or may not be members of the hospital association. Nor does the fact that a public charitable hospital receives pay from a patient for lodging and care affect its character as a charitable institution. *Taylor v. The Protestant Hospital Association*, 85 Ohio St., 90.

There is no claim made in the pleadings that this corporation is a plan of subterfuge on the part of its promoters for the purpose of deriving profit under the guise of a charitable institution. That question could hardly be made in this case, but rather in a case brought by the State, or on behalf of the State, to revoke its charter, either for fraud upon the State in procuring the charter to issue or for an abuse of its corporate powers.

It further appears that this property is actually used by the defendant in error in the operation of its hospital. Under its charter, the allegations of its petition, the evidence in this case, and the finding and judgment of the Court of Common Pleas, this property cannot lawfully be used by this corporation for a hospital other than a public charity hospital.

Where private property is temporarily used exclusively for purposes of public charity it may be withdrawn from such use at any time at the will of the owner, but that cannot be done with the property in question. It was purchased with trust funds donated for the purposes of a public charity hospital, and is impressed with that trust. It cannot be withdrawn at the will of the trustee, or of any or all of the donors of the fund, from the uses of this trust. The donors of this fund have parted with all private ownership in the fund itself. They have no property interest in the fund, or the real estate purchased with the fund, and no rights whatever in relation thereto, except to compel the administration of the trust in accordance with the terms of the gift. The title to this property is in this corporation only as a trustee for the purposes of this trust, and it cannot divert it to any use other than public charity.

Every dollar received by this association from patients that are able to pay, or from other sources, immediately becomes impressed with the same trust and cannot be diverted to private profit. This corporation can be compelled by a court of competent jurisdiction to administer this trust according to the intent and purposes of the donors of the fund as found by the Court of Common Pleas in this case, or upon its failure to do so, it can be removed and another trustee appointed who will properly administer the same.

It is true that this corporation is not compelled to use this property for hospital purposes. It may find it inadequate for its needs and purchase other property for that purpose, or it may find that it is not necessary to occupy the entire property for a hospital, and may sell the same, or rent the whole or a part thereof, as may in its judgment be for the best interest of the trust, but the funds obtained from sale or rentals would still be trust funds that could not be devoted to any other purpose except the purposes of the trust, although the property itself would no longer be used exclusively for public charity. If, however, it uses this property exclusively for hospital purposes, then such hospital must be a public charitable hospital, and as such its doors must open to those who are unable to pay, the same as they open to those who have the means to contribute further sums to this public charity commensurate in a degree at least with the hospital accommodations they receive.

The fact that it may receive pay patients without losing its character as a public charitable hospital does not authorize it to receive pay patients in such numbers as would exhaust its accommodations so that it cannot receive and extend hospital service to the usual and ordinary number of indigent patients applying for admission under proper rules and regulations of the board of trustees, except, of course, the cases it has no facilities for handling as described and defined by the evidence in this case. The first concern of a public charitable hospital must be for those who are unable to pay. If, after taking care of these, it still has further accommodations there can be no objection to making use of the same for pay patients in order to increase the fund which may be at its disposal for the benefit of the poor. It may be, however, that it cannot always nicely measure these demands. It is sufficient if it conforms its conduct along the lines of its experience as to the ordinary and usual demand made upon it by charity patients, provided, always, that it act in good faith and consistent with the purposes of its organization.

If this defendant in error fails in these particulars, the remedy is not by placing this property upon the tax duplicate, but by action to enforce a proper administration of the trust, or the revocation of its charter for abuse of its corporate franchise, and the appointment of another trustee to administer the trust.

The judgment of the Court of Appeals affirming the judgment of the Court of Common Pleas is affirmed.

*Judgment affirmed.*

Nichols, C. J., Wanamaker, Newman, Jones, Matthias and Johnson, J. J., concur.

Copy of Annual Report Blank now used  
by 21 Cleveland Hospitals represent-  
ed in the Cleveland Hospital Council.

# ANNUAL REPORT

OF.....  
Name of Hospital

TO THE

CLEVELAND HOSPITAL COUNCIL

FOR THE FISCAL YEAR.....TO.....

# Cleveland Hospital Council

Report of .....  
(Corporate Name of Institution.)

For the Fiscal Year....., to.....

## NOTE CAREFULLY

Please return this report by.....to the Cleveland Hospital Council, 308 Anisfield Building, Cleveland, Ohio.

A *Hospital Patient* is defined as a person receiving continued medical and nursing attention, who occupies a listed hospital bed and remains not less than 24 hours. *Persons giving regular labor for their board* should not be included in Hospital figures except when admitted to the Hospital as patients, and the cost of their care should not be included in expenses for Hospital patients. *Waiting Maternity Patients, Infants, Children*, occupying Hospital beds and receiving continued medical and nursing care, should be included. The *Daily Census Report* for the previous 24 hours should be taken at midnight.

The *Days of Treatment* given should be obtained as follows: All Hospital patients as defined above, treated for any part of the previous 24 hours, should be included in this report. The total number of such patients should be figured as the days of treatment given on that day.

*Out-Patient Work of All Kinds*, and the total cost and receipts for the same, should be separated from Hospital figures and reported under the proper headings. Otherwise the figures for both Hospital and Out-patient work will be incorrect and misleading.

## WORK DONE

Hospital Patients (See above notes)	Number of Patients	Number of Days of Treatment	Amount Paid to Hospital
1 Pay Patients (x).....			
2 Part-Pay Patients (y).....			
3 Free Patients (z).....			
4 Public Charges..... (Accepted by County, City or Township.)			
5 Totals.....			

(x) *Pay Patients* are those for whom at least the cost of their care is paid. (y) *Part-Pay Patients* are those for whom only part of the cost of their care is paid. (z) *Free Patients* are those for whose care nothing is paid. Uncollectible bills for Hospital service should not be included here as free patients or free days of treatment, but in line 52.

*Dispensary Patients and Emergency or Accident Patients* remaining in the Hospital less than 24 hours should be reported separately and not included in the above.

### 6 Dispensary Patients:

New Patients.....; Revisits.....;

Total Visits or Treatments.....

(New Patients are those who have not applied before during fiscal year at least. New Patients plus Revisits equal Total Visits or Treatments.)

### 7 Accident and Emergency Patients: Number treated..... (Patients remaining in hospital less than twenty-four hours.)

#### Hospital Beds:

8 (a) In Private Rooms.....; (b) In Semi-Private  
Rooms or Wards.....; (c) In General Wards.....

Total .....

- 9 Beds (d) "Admitting".....or (e) "Isolation".....  
 (Not included in line 8.)  
 Total .....
- 10 Average Number of Days' Treatment Given Each Patient .....  
 (Divide total days, Line 5, by Total Patients, Line 5.)
- 11 Average Number of Patients Treated Per Day.....  
 (Divide total days, Line 5, by 365 or 366 days.)

### Working Force:

- 12 Number Paid Resident Physicians and Surgeons (including  
 Pathologist and other special Residents).....; Number  
 of Internes..... Total Resident Staff .....
- 13 Hospital Nurses, Average on Daily Duty: (a) Graduate  
 .....; (b) Special.....; (c) Pupil.....;  
 (d) Probationers..... Total Nurses .....
- 14 Number Male Attendants (Orderlies).....; Num-  
 ber Female Attendants..... Total Attendants .....
- 15 Social Service: Volunteer Workers.....; Cases  
 .....; Visits..... Number Paid Workers .....
- 16 General Employes (excluding Physicians, Nurses, At-  
 tendants, Orderlies and Probationers, listed above, but in-  
 cluding all others)..... Total Number .....
- 17 Total Working Force.....
- 18 Number Ambulances: For Private Use of Hospital only  
 .....; For Emergency Service.....; For Pub-  
 lic Use (except emergencies)..... Total .....

## INCOME

### EARNINGS OR RECEIPTS FROM OPER- ATING THE HOSPITAL:

#### From Patients:

- 19 Pay Patients (Patients for whose care at least  
 cost is paid). Including the Rose Fund Re-  
 ceipts (Amounting to \$.....). And in-  
 cluding Receipts for Wages of Special Nurses  
 if Paid to the Hospital (Amounting to  
 \$.....) ..... \$.....
- 20 Part-Pay Patients (Patients for whose care  
 only part of the cost is paid)..... \$.....
- 21 From County, City or Township Patients:  
 Public Charges (County)..... \$.....  
 Public Charges (City).....  
 Public Charges (Township) .....  
 Total Public Charges..... \$.....

22	Miscellaneous, Sales, etc.....	.....
23	Emergency and Accident Room Receipts.....	.....
24	Dispensary Receipts .....	.....
25	<b>Total Earnings from Operation of Hos- pital and Dispensary.....</b>	<b>\$.....</b>

#### CONTRIBUTIONS FOR CURRENT EX- PENSES:

26	From Federation for Charity and Philanthropy:	
	(a) Designated Gifts .....	\$.....
	(b) Discretionary Gifts .....	.....
27	From Calvary Morris Estate.....	.....
28	From Entertainments, Fairs, etc. (Net Re- ceipts) .....	.....
29	From Dues, Memberships, etc.....	.....
30	From Individuals Not Included in (a) or (b) .....	.....
31	From Miscellaneous Sources.....	.....
32	<b>Total Contributions for Current Expenses</b>	<b>\$.....</b>

#### INCOME FROM CAPITAL OR ENDOW- MENTS:

33	From Income of Endowment Funds (Special and General).....	\$.....
34	From Rentals, Interest on Current Funds, etc. ....	.....
35	From Receipts from Sales or Other Capital Funds Used for Current Purposes.....	.....
36	<b>Total Capital Income from Endowment or Capital .....</b>	<b>\$.....</b>

#### SUMMARY INCOME

37	Total from Operating Earnings (Line 25).....	\$.....
38	Total from Contributions (Line 32).....	.....
39	Total Income from Capital (Line 36).....	.....
40	<b>Grand Total Income from all Sources.....</b>	<b>\$.....</b>

#### EXPENSES

##### HOSPITAL OPERATING EXPENSES:

41	Administration .....	\$.....
	(General Officers, Clerks, Stationery, Printing, Postage, Annual Report, Telephone, etc.)	
42	Professional Care of Patients.....	.....
	(Including Wages of Special Nurses if paid by the Hos- pital \$.....) (Salary and Wages, Nurses, Orderlies, Attendants, Employees, Medical and Surgical Supplies.)	
43	General House, Department and Property .....	.....
	(Fuel and Light, Ice, Ordinary Repairs, Rent, Insur- ance, Ambulance, Laundry, Provisions, House- keeping, etc.)	
44	Uncollectible Pledges, Dues, etc., Charged Off .....	.....
	(If lines 26-32 are on the Bills Receivable basis and include these sums. If lines 26-32 are on the Cash basis, report no figures here.)	
45	Social Service .....	.....

46	Dispensary .....	
	(Include deductions made from hospital figures for proper proportion of common overhead and department expenses. Make this figure, as accurately as possible, the total expense of the Dispensary.)	
47	Miscellaneous: Travel and Transportation, etc. ....	
48	<b>Total Operating Expenses</b> .....	\$.....

#### **CORPORATION EXPENSES:**

49	Salaries (Secretary or Treasurer and Clerks) and Incidental Operating Expenses of the Corporation .....	\$.....
50	Expenses for Raising Funds for Income, Plant or Deficits, for Education, Advertising and Publicity:	
	(a) Commission or Salary Paid Individuals .....	\$.....
	(b) Proportion of Federation's Expense for Collection of Funds, for Extension, Education and Efficiency .....	\$.....
	(This figure (b) should be obtained from the Federation.)	
51	Interest on Mortgages and Loans.....	
52	Uncollectible Bills for Hospital Service Charged Off .....	
	(If lines 19-25 are on the Bills Receivable basis and include these accounts. If lines 19-25 are on the Cash basis, report no figures here.)	
53	Taxes, Legal or Other Corporation Expenses .....	
54	<b>Total Corporation Expenses</b> .....	\$.....
55	<b>Total Operating and Corporation Expenses</b> .....	\$.....
56	Average Daily Per Capita Cost of Patients (Divide Total Cost, Line 55, less Dispensary Cost, Line 46, by Total Number of Days of Treatment, Line 5.) .....	\$.....
57	Average Cost Per Dispensary Visit..... (Divide Total Dispensary Cost, Line 46, by Total Number of Visits, Line 6.) .....	

#### **ADDITIONS OR EXTENSIONS TO HOSPITAL PROPERTY:**

(To be Added to Permanent Value of the Plant.)

58	New Machinery, Apparatus, etc.....	\$.....
59	Alterations and Extraordinary Repairs.....	
60	New Buildings and Land.....	
61	Miscellaneous .....	
62	<b>Total Permanent Additions</b> .....	\$.....

#### **FINANCIAL SUMMARY**

63	Cash on Hand or Deficit at Beginning of Year .....	\$.....	\$.....
		Deficit	Cash on Hand
64	Total Income (Line 40).....		
65	Total Expense (Line 55).....		
66	Balance on Hand or Deficit at End of Year .....		
		Cash on Hand	Deficit
67	<b>Totals</b> .....	\$.....	\$.....

## ASSETS

68	Value Land, Buildings and Equipment.....	\$.....
	(Used for Hospital Purposes.)	
69	Other Land, Buildings and Real Property.....	.....
70	Restricted Endowment Funds.....	.....
71	Unrestricted Endowment Funds.....	.....
72	Cash on Hand Account Principal.....	.....
73	Accounts Receivable .....	<u>.....</u>
74	Total Assets .....	<u>\$.....</u>

## LIABILITIES

75	Loans or Mortgages.....	\$.....
76	Accounts Payable .....	.....
77	Other Miscellaneous Liabilities.....	<u>.....</u>
78	Total Liabilities .....	<u>\$.....</u>
79	Excess Assets over Liabilities.....	\$.....

## OFFICERS OF THE HOSPITAL

President .....	Secretary .....
Address .....	Address .....
Treasurer .....	
Address .....	Superintendent .....

## If City Institution

Director Public Welfare	Superintendent of Hospital
.....	.....
Commissioner of Charities and Correction	Secretary to Director
.....	.....
Signature of Superintendent making above Report	The above Report is correct and approved by me (To be signed by the President or Secretary of the Hospital or Corresponding Officers)
.....	.....
	..... (Official Title)

# Medical Practice Recommendations

## PRELIMINARY STATEMENT

The following report recommends the regulation of the practice of medicine by the State itself for the benefit of the public; it recommends the single educational standard and the gradual attainment of this standard in Ohio; it recognizes that prayer is not a therapeutic means, and, therefore, recommends exemption of all those who confine their efforts at healing to prayer from any educational standard applied to medical practice.

The prime reason for the enactment of medical practice laws is "public welfare"—the protection of the public and the individual. Organized society generally subscribes to this principle. The persons to be regulated are those who seek to cure the sick by any system of treatment, the members or representatives of the healing professions; it is against incompetence on the part of these that the public is to be protected. The administration of such laws is a police power function of the State.

Ohio has experimented for over one hundred years with medical practice laws, but at no time has the State itself actually administered them. Like most of the States, it has surrendered its control by vesting this authority in the hands of representatives of the very ones against whom the public is to be protected. Regardless, however, of the shortcomings of the present system, there is an organized demand for a similar delegation of the State's police power to other branches. Further extension or application of this erroneous principle would not benefit the public. Now is the time for the State to assume the entire responsibility and exercise it for the benefit of the public.

Perhaps the most important principle underlying the discussion and recommendations following is the single educational standard; that is, the same preliminary and medical educational qualifications for all who treat the sick by any mechanical or therapeutic agent, regardless of the particular system or theory of treatment or healing used.

# Medical Practice Recommendations

## RECOMMENDATION

I. Legislation should be enacted abolishing the present State Medical board and creating in its place the Department of Medical Registration, consisting of a Director, who should have final authority in all matters pertaining to medical licensure, and Advisory Committees representing the various healing professions, including the so-called "Regular" profession, Homeopaths, Eclectics, Osteopaths, Optometrists and Chiropractics, and a Committee representing the Nursing profession. The Director should be an educator but not a member of any healing profession. To this department should be transferred, by legislative action, all the power and authority now vested in the State Medical Board and the Osteopathic Examining Committee.

For draft of proposed Act see pages 60-61.

For complete discussion of recommendation see pages 34-38.

## DIGEST OF DISCUSSION

The present system of medical practice, regulation in Ohio is antiquated. The medical laws are administered by a politico-medical and sectarian board, consisting of "Regulars," Eclectics and Homeopaths. Not only does the medical profession, thus clothed with the power of the State, regulate its own practice, but it actually regulates and controls the practice and licensure of all the healing professions, as well as the practice of nursing and midwifery. A monopoly of control has been created. The system does not provide for a complete separation of the licensing and educating bodies. The present members of the State Medical Board have more or less official connections with their respective medical schools. It is not easy to draw the line between the member's duty as a representative of a school of teaching or practice and as a representative of the licensing board of the State. There has developed a far-reaching public distrust of the present system and of the medical profession because of this system.

Representatives of other healing professions attack the system in every session of the Legislature. The attack has recently found expression in a demand for the creation of new, special licensing boards. In accordance with established custom, each branch of medical practice places its own special interests ahead of the public welfare in its demand that the police power of the State be delegated to its members also for purposes of regulation. These attacks have continued and more are promised, in spite of the fact that it is now generally conceded to be fundamentally wrong to lodge the police power of the State in the hands of representatives of any profession to prescribe within legislative limits the educational qualifications of that profession; to govern its license and to regulate its practice, or to control, in any degree, the affairs of any other profession. The necessity of a change in fundamental policy is apparent. Ohio must choose one of three alternatives:

1. Continuation of the present system.
2. Extension of the present system by the creation of more special licensing boards.
3. The proposed Department of Medical Registration.

The present plan is admittedly a failure. It is inconceivable that Ohio will embark on a policy of creating more State Boards or Commissions. By unanimous agreement it has too many now. Adoption of the third alternative, as recommended, would make it possible to eliminate existing suspicion and distrust, but, of more importance, would pave the way for an extended application of the fundamental principle of education to all medical licensure.

The principle of the proposed plan is favored and advocated by the leaders of the medical profession. Their attitude is summed up in the words of Dr. Frederick R. Green, who says, "We (the medical profession) have in the last forty years been assuming a burden which does not belong to us. To this extent

we have pauperized the public by depriving them of their own responsibility. As soon as this responsibility and duty is returned to the people, where it belongs, the better it will be for the public and the profession." The State should now assume its responsibility as pilot of the police power.

## RECOMMENDATION

II. The proposed Department of Medical Registration should give immediate consideration to the present educational qualifications of the various healing professions, including both limited and unlimited branches of practice. New legislation is not now necessary. The proposed department has authority, under Section 1274-5, to meet or reject the demands that the educational qualifications of some of the branches be raised and others lowered.

The Section referred to provides that the Entrance Examiners of the State Medical Board shall determine the sufficiency of the preliminary education of applicants for such limited certificate as is provided in Section 1270 of the General Code;

"Provided, however, that the State Medical Board may adopt rules defining and establishing for any limited branch of medicine or surgery such preliminary educational requirements, less exacting than those prescribed by said section, as the nature of the case may require."

For complete discussion of recommendation see pages 38-40.

## DIGEST OF DISCUSSION

Education is the fundamental basis for licensure of the limited or unlimited practice of medicine. The modern tendency is to urge one educational standard for all the healing professions, regardless of their system of treatment. Such a requirement in Ohio now, however, would be like attempting to "superimpose a model law" upon the State without recognition of existing conditions.

The single educational standard involves two things:

1. Uniform preliminary educational requirements.
2. Uniform courses of instruction and other educational requirements in the medical colleges or other institutions of medical teaching.

Such uniformity as would be necessary under the single educational standard requirement probably can never be brought about in Ohio by legislative action alone unless all present medical practice laws are first repealed. Ohio's legislative experiments with educational qualifications for the healing professions have resulted in two far apart extremes; the highest educational qualifications for a license to practice medicine; and the lowest for a license to practice Chiropractic. Yet both, by different systems of treatment, claim to do the same thing—treat the sick.

Without any added legislation, however, much can be accomplished in Ohio toward the single educational standard for all the healing professions by use of discretionary authority now vested in the medical board under Section 1274-5. No change should be made in the educational requirements for a license to practice medicine. Under this authority present low grade, preliminary, educational requirements can be gradually raised and courses of instruction in the low grade schools of medical teaching can be gradually improved until they shall be equal to the highest educational standards of the Medical Practice Act. This will, of course, take a number of years. The Osteopaths will, undoubtedly, be among the first to meet the highest requirements and the Chiropractors among the last. The Osteopaths are anxious to raise educational requirements; Chiropractors to lower them.

One great hindrance to the gradual attainment of the single educational standard will be the enactment of so-called "waiver" clauses in any future medical license legislation. Heretofore it has been customary, whenever the Legislature has recognized a healing profession, to license by a waiver clause all the members of that profession who have practiced in the State for a period of years. Such waiver clauses have always created trouble. The waiver clause of the Platt-Ellis law, which admitted 262 Chiropractors without examination, should be a warning against repetition of such legislation.

## RECOMMENDATION

III. Legislation should be enacted eliminating the dominating commercial feature of the present Medical Practice Act as contained in Section 1286.

For draft of proposed Act see page 62.

For complete discussion of recommendation see pages 40-44.

## DIGEST OF DISCUSSION

The present legal fundamental basis of medical practice is commercial. In any criminal procedure aimed to protect the public from ignorant practitioners, the point to be proven now is, "Did the person concerned receive a fee or compensation, direct or indirect, for services rendered?" Although this commercial factor was written into the definition of the practice of medicine primarily as a basis to detect and prosecute quacks, it does not justify the emphasis of the commercial factor of medical practice over and above the educational. Nor has it resulted in adequate protection of the public.

The medical quack or faker who hasn't a license, and never intended to apply for one, can diagnose, advise and prescribe, free of charge, but at the same time pass his patient out into the next room to receive a shower bath at the hands of an attendant, who charges \$10 per bath and thus escape conviction. The Christian Scientist can administer free spiritual healing and not violate the law. The pupil nurse, or any other unskilled person, may administer an anesthetic free of charge and not violate the law. Bonesetter Reese, or anyone else who wants to, can treat the baseball player's arm free of charge, but pick up a donation on the kitchen table. Any healer can do likewise so long as the right hand doesn't know what the left hand takes. And the public is led to believe that this commercial aspect of the medical practice definition is essential for its protection. It is even argued that it would be impossible to convict for illegal practice without the fee provision of the law. This should no longer continue in Ohio.

The legislative proposal, if enacted, would help to eliminate commercialism. All who wish to practice medicine in any of its branches, regardless of compensation, would have to be licensed. No one could practice medicine, free of charge or for compensation, without a license. With the exception of the compensation clause, the definition of the practice of medicine would remain the same. In any prosecution, therefore, to protect the public against ignorant practitioners, the only point to be proven would be, "Did the person involved have a license?" And this would simply be a matter of official record. Nothing in this proposal would prohibit service in case of emergency or domestic administration of family remedies which are especially exempted.

## RECOMMENDATION

IV. Legislation should be enacted providing that nothing in the Medical Practice Act shall be construed to prohibit the administration of an anesthetic by a registered nurse under the direction of, and in the immediate presence of, a duly licensed and qualified physician.

For draft of proposed Act see page 65.

For complete discussion of recommendation see pages 45-51.

## DIGEST OF DISCUSSION

From time immemorial in Ohio, persons other than licensed physicians, and especially graduate or registered nurses, have administered anesthetics under the direction and immediate supervision of a licensed physician. Anesthetics have been so administered, not only in accordance with universal custom, but in accordance with the generally accepted intent of the law. With the calling of so many medical men into military service the past year, they have been so administered more than ever before, both inside and outside of hospitals.

Anesthetics are administered by nurses under the direction of a physician as a matter of custom and law in many other States. In twenty-six States this procedure by nurses, under the direction of a physician, is not the practice of medicine, and is, therefore, permitted by law. Among other States, in addition to this number, the Louisiana law specifically permits the procedure. The medical practice laws of five States, according to the Medical Board of each State, do not cover the matter at all; in other words, the procedure is not the practice of medicine. In several States in which the procedure is considered a technical violation of the law, the administration of anesthetics by nurses is permitted as a matter of custom. In all of these States, as well as in Ohio, it is generally conceded that the responsibility for the complete surgical operation, including every act of each and every assistant, including the anesthetist, even though a physician, dentist or unskilled person or registered nurse, rests solely and completely upon the surgeon. His personal liability in case of negligence on his part, or on the part of one of his assistants, is also conceded.

Not the slightest doubt or question as to the legality of this procedure ever arose in Ohio until 1911, or nearly twelve years after the enactment of the present definition of the practice of medicine. The State Medical Board raised this doubt and secured an opinion from the Attorney General to the effect that a person not a registered physician may not administer an anesthetic under the supervision of a registered physician. In 1912 the Medical Board also secured an opinion from Attorney General Hogan to the effect that even dentists might not legally administer anesthetics under the supervision of a registered physician. Following this opinion, the Legislature enacted an exemption amendment to the Medical Practice Act permitting dentists to administer anesthetics for surgeons. So far as the administration of anesthetics under supervision of a physician by nurses, the custom continued as before. The State Medical Board did nothing but adopt a resolution.

After the question had slumbered for years, the Medical Board, in 1916, prodded by the State Association of Anesthetists, again raised the question. Up to this time it had failed to prosecute anybody and had not attempted, in any way whatsoever, to test the matter in the courts. This time it sought a conclusion by use of an ambiguous clause in the Nurse Registration law. This in itself was practically an admission on the part of the State Medical Board that the administration of anesthetics by a nurse under direction has nothing to do with the Medical Practice Act. Little or nothing was accomplished by this procedure.

In 1917 and 1918 this Committee asked the present Attorney General to render several opinions on this question. While opinions of the Attorney General are not law, it was thought that some light might be thrown upon the question, particularly as to its commercial aspects. On account of the conditions raised by these opinions, and particularly those relating to the commercial features of the anesthetic problem, the situation is even more complicated.

The proposed amendment will recognize what has been common practice in Ohio for many years. It will permit registered nurses—that is, those recognized and licensed by the State of Ohio—to administer anesthetics under the direction of and in the immediate presence of a duly licensed and legally qualified physician.

The chief opposition to this proposal will undoubtedly come from the State Association of Anesthetists, consisting perhaps of fifty members. Since the basis of their opposition is *commercial, economic and ethical*, it can be safely disregarded. It is summed up in the following quotation from a brief filed by a representative of the Anesthetists' Association with the Medical Board:

**"In abolishing the nurse anesthetist (he should have said, 'In attempting to abolish') the Ohio State Medical Board fully realized that her employment constituted an economic menace in many re-**

spects. In utilizing her services as a salaried attache, certain surgeons and hospitals have been, and are now, enabled to undersell the anesthetic services of their confreres and competitors. Fortified with endowments such individuals or institutions have not hesitated to reduce anesthetic fees to an irreducible minimum—to a basis upon which no self-respecting, independent, qualified anesthesiologist can make a decent living or maintain an ethical standing in his profession . . . As for under-priced fees, especially when they are accorded patients who are financially able to pay the proper fees—these fees constitute an economic crime against the welfare of the entire profession.”

## RECOMMENDATION

V. Legislation should be enacted amending Sections 1295-5 and 1295-6 of the General Code (the Nurse Registration Law) to deprive the State Medical Board of any authority whatsoever over hospitals as such for purposes not really necessary in the supervision of nurse registration.

For draft of proposed Act see pages 63-64.

For complete discussion of recommendation see page 51.

## DIGEST OF DISCUSSION

These sections contain certain ambiguous clauses upon which the State Medical Board based its reason for refusing to recognize the training school for nurses in one of the leading hospitals in this State. It is generally conceded that the Legislature never intended to give the State Medical Board such power. Such authority over hospitals, as such, is absolutely unnecessary for purposes incidental to the supervision of nurse registration. It should, therefore, be eliminated. Such legislative action will undoubtedly be approved by the great majority of the medical profession as well as the nursing profession.

## RECOMMENDATION

VI. Legislation should be enacted to regulate and control the practice of Optometry.

For complete discussion of recommendation see pages 51-54.

## DIGEST OF DISCUSSION

“Dealing in vision” has never been regulated in Ohio, although various legislative proposals have been introduced in the General Assembly for that purpose. The chief advocates of such regulation are the Optometrists.

The legal status of the practice of Optometry has never been determined in Ohio. It is probably a limited branch of the practice of medicine. At least it is within the power of the next Legislature to make it so. There is undoubtedly great need of such regulation because, as Governor Harmon said in his veto of the Optometry bill in the 78th General Assembly, “to common knowledge, much harm is done by itinerant and other persons who profess to supply the needs of the people.” Ohio has three alternatives to consider as the basis for regulation.

1. Place the practice of Optometry under control of the State Medical Board. This would obviously be unfair; just as unfair as it is to delegate the police power of the State to representatives of the medical profession to regulate other limited branches or to regulate themselves.

2. Create a special board of regulation, as the Optometrists desire, consisting undoubtedly of representatives of the Optometry profession, to whom would be delegated police power to regulate their own affairs. This is fundamentally wrong in principle as set forth throughout this report. And Ohio already has too many licensing boards and commissions.

3. Recognize the practice of Optometry as a limited branch of medical practice and place authority for its control in the hands of the Director of the Department of Medical Registration, and give him the assistance of an advisory committee of Optometrists. It would be dangerous and absolutely inconsistent with public welfare to include a general waiver clause as contained in the 1917 bill in any Optometry legislative proposal which would admit, without examination, the existing horde of spectacle vendors or others who have technically practiced for five years but who are absolutely unqualified to practice as Optometrists.

Adoption of the third alternative is recommended.

## RECOMMENDATION

VII. Legislation should be enacted exempting the practice of Christian Science from the provisions of the Medical Practice Act, and, therefore, from control of the State Medical Board.

For draft of proposed Act see page 66.

For complete discussion of recommendation see pages 54-59.

## DIGEST OF DISCUSSION

As a matter of custom, Christian Scientists have in Ohio for years practiced their healing art. So long as they did not receive compensation they were not considered violators of the Medical Practice Act. They have repeatedly asked the Legislature to exempt them from control of the Medical Board and from the provisions of the Medical Practice Act on the ground that their practice is the practice of religion and not the practice of medicine. This exemption, however, has been denied them.

Christian Scientists, in the practice of their religion, are now exempt from the Medical Practice Acts of thirty States. Information secured from these States indicates that only to a very limited degree have impostors taken advantage of Christian Science exemption to represent themselves as practicing in accordance with the religious tenets of some church; that Christian Scientists have been reasonably considerate of the provisions of the sanitary code of the State; that they have failed only to a very slight degree to report contagious and infectious diseases as required by law. The two following principles which are the basis for the above recommendation for Christian Science exemption are advocated and supported by the leaders of the medical profession of this country.

**"1. In the present chaotic state of therapeutics, using the word in its broad sense, the State is not concerned in the relative scientific value of different methods of treatment.**

**"2. All those who confine their efforts at healing to prayer in obedience to the tenets of an established church, and who do not pretend to make a physical diagnosis, shall be exempt from the application of the educational standard."**

Christian Science amendments have heretofore been defeated in Ohio on the ground that Christian Scientists would be a menace to the public health because they cannot recognize and therefore cannot report contagious diseases. It should be noted that Christian Science is not at all based upon diagnosis. The law pertaining to the reporting of contagious diseases in Ohio (Section 4427) makes no requirements as to diagnosis, but specifically requires physicians or other persons called to attend contagious diseases, as well as the owner or agent of a building, or head of the family, when informed, to report the existence of such contagious diseases. The argument, therefore, that singles out Christian Scientists as unable to recognize contagious diseases, and therefore unable to report them, is refuted and falls to the ground by the very requirements of this Ohio statute.

In the proposed amendment the usual safeguards for the public health and welfare have been provided. And, of course, it must be understood that the moral and legal responsibility of the citizen to protect himself, his family, and the public from contagion or otherwise, and to comply with all existing laws is in no way altered by the employment of Christian Science advisers.

# Discussion of Medical Practice Recommendations

*(The recommendations are repeated and each is followed by general discussion.)*

## RECOMMENDATION

I. Legislation should be enacted abolishing the present State Medical Board and creating in its place The Department of Medical Registration consisting of a Director who should have final authority in all matters pertaining to medical licensure, and Advisory Committees representing the various healing professions, including the so-called "Regular" profession, Homeopaths, Eclectics, Osteopaths, Optometrists and Chiropractics, and a Committee representing the Nursing profession. The Director should be an educator but not a member of any healing profession. To this department should be transferred by legislative action all the power and authority now vested in the State Medical Board and the Osteopathic Examining Committee.

## DISCUSSION

Ohio is on the threshold of a new era in medical practice regulation; at least it has reached the point of being compelled to make a change in its fundamental policy. For purposes of this discussion, Ohio has practically passed through four periods of medical legislation. Brief reference to them only is necessary.

The pioneer period of "district" regulation by the medical profession from 1811 to 1833.

The period of non-regulation, 1833 to 1868.

The period of medical college control and county medical society regulation, 1868 to 1896.

The period of centralized regulation by the medical profession through a medical board intended to represent the State, but to all intents and purposes representing the medical profession, 1896 to present time.

An analysis of the present act, which had its beginnings in 1896, together with a statement of the attitude of the public and medical profession, limited practitioners, and others toward the Act and its enforcement, emphasizes many of the reasons for this recommendation.

# The Organization, Duties and Responsibilities of the Present State Medical Board

**ANALYSIS OF THE MEDICAL PRACTICE ACT—First.** The present Board, consisting of seven physicians, now represents three schools of practice in the State—the so-called “Regular” school, Homeopaths, and Eclectics.

*Second.* No school can by law have a majority on the Board. Schools of practice are supposed to be given representation on the Board as nearly as possible in proportion to their numerical strength in the State. It is to be noted that the seven members shall be *physicians* in good standing in their profession. This evidently is interpreted to mean that members of other healing professions or other schools of practice, who cannot legally call themselves physicians, are barred from membership on this Board.

*Third.* The original act gave the Board authority to regulate the licensure of medicine, surgery and midwifery. Today this same Board, so constituted, has, by amendment to the Act, additional authority to examine and register persons desiring to practice any limited branch or branches of medicine or surgery and establish rules and regulations governing such limited practice. This includes “chiropractic, naprapathy, spondy-lotherapy, mechano-therapy, neuropathy, electro-therapy, hydro-therapy, suggestive-therapy, psychotherapy, magnetic healing, chiropody, Swedish movements, massage, and such other branches of medicine or surgery as the same are defined in Section 1286 of the General Code that may now or hereafter exist, except midwifery and osteopathy,” which are otherwise provided for in the Act.

The Board claims also to have authority to regulate the practice of optometry, which claim is now being disputed in the courts. (Barr vs. the State Medical Board, Franklin Co.) In this Board also is vested control over the practice of Christian Science for compensation in the sense that such practice has been interpreted to be the practice of medicine and in violation of Section 1286; (See State vs. Marble 72, O. S. 21) as well as full authority to regulate the practice of nursing. Through two sections of the Nurse Registration Law the Board has, until recently, claimed an almost unheard of control over hospitals.

*Fourth.* The Board appoints an Entrance Examiner to determine the sufficiency of the preliminary education of applicants for admission to examination. For purposes of enforcing various medical practice regulations it has authority to determine what medical schools, colleges and other medical institutions (except Osteopathic Schools), including all schools of limited practice of medicine, are in good standing. And not only this, but for purposes of enforcing the laws pertaining to the practice of nursing, it has authority to define and determine what training schools and what hospitals are in good standing. In other words, it has authority to inspect and to determine the standing of the schools, colleges and institutions, or individuals giving instruction in them.

*Fifth.* Within certain limitations the Board has authority to arrange reciprocal relations with other States for the admission of limited or unlimited practitioners to practice in Ohio.

*Sixth.* The Board may, in its discretion, call in members of certain limited branches of the practice of medicine to assist in the conduct of examinations, and it may also, in its discretion, adopt rules defining and establishing for any limited branch of medicine or surgery preliminary educational requirements less exacting than those prescribed in Section 1270 in the Medical Practice Act as qualifications to practice medicine. In a word, after one hundred years of regulation and non-regulation of the practice of medicine in Ohio, we have come to the point where seven especially appointed representatives of the medical profession, backed by the police power of the State, not only regulate the practice of that profession (Regular, Homeopaths and Eclectics), as it has done pretty much through all the periods of regulation, but they actually regulate and control the practice and licensure of all the healing professions, and in addition the practice of nursing. A monopoly of control has been created.

**ATTITUDE OF THE PUBLIC**—What is the attitude of the public toward this state of affairs? This may best be summed up by what appears to be a pronounced "legislative state of mind" toward medical license and medical practice and the medical profession. The Ohio Medical Practice Act is antiquated. It represents only three schools of practice. Such a basis of representation is also antiquated, because it results in a sectarian board. If it is right to delegate police power to the medical profession, why not delegate it to the limited practitioners? But why allow the medical profession to regulate itself, much less why allow it to regulate and control all the healing professions? There is a commercial aspect to this medical practice business. The State cannot legally prove the practice of medicine unless it proves the giving of a fee. The medical profession apparently does not want other healers to practice for compensation. The medical profession now regulates not only itself but also its competitors—the "limited practitioners" and the nurses. It seeks thus to control all potential competitors. We cannot distinguish between the State Medical Board, as now constituted, and the State Medical Association. Much opposition to extending similar privileges to other branches of practice is based not on a desire to safeguard the public health, but to protect "special privileges."

These arguments are often heard in the sessions of the Legislature and indicate a deep-seated and far-reaching public distrust of the medical profession and the present system of regulation. Far more than ever before the legislator reflects the sentiment of his constituents, and, therefore, the public.

**ATTITUDE OF THE LIMITED PRACTITIONER**—What is the attitude of the limited practitioners? In many respects the bills they present at each session of the Legislature may be considered as a fair index of their attitude. It is not maintained that their attitude toward the Board and the medical profession as represented on the Board is in every respect a fair one. Their criticisms are frequently as unfair as their demands for special legislation when the interests of the public are not placed ahead of special privileges. They are at least reasonably consistent in their demand that if the State is to continue the policy of parceling out its police power to professions for purpose of regulation, they also should be especially favored.

In the 82nd General Assembly this demand for delegation of the police power of the State found its expression in the bills for creation of new licensing boards. Three such boards were demanded—one by the Optometrists, one by the Chiropractics, and one by Naturopaths. In addition, the Osteopaths sought to be placed on legal par with physicians, while Christian Scientists demanded exemption from the Medical Practice Act, and, therefore, from control of the Medical Board. To this extent they sought to escape a "monopoly." In most instances, however, their proposed educational standards were inconsistent with their demand for special privilege. These are discussed under recommendations 3, 6 and 7.

**ATTITUDE OF THE MEDICAL PROFESSION**—What is the attitude of the medical profession? The attitude of physicians in general toward medical practice laws has been the subject of much inquiry and discussion. The best discussion on their general attitude may be found in a paper entitled "State Regulation of the Practice of Medicine," by Dr. Frederick R. Green of the American Medical Association.

Dr. Green is of the opinion that in any State only a small number of physicians can be found sufficiently interested to take any active part in advocating the enactment of new medical practice laws or of amendments designed to strengthen existing laws. He doubts if any such campaign in any State ever enlisted the active support of more than 10% of the physicians in the State. This is absolutely true in Ohio with the exception that a larger number of physicians than usual were active in opposition to the last Christian Science proposal. Fully 80% of Ohio physicians have but a limited knowledge of the medical practice laws and very little of medical legislation or legislative machinery. Many of them care less. Why should they? It is not the business of members of the medical profession, either as individuals or through their especially appointed representatives, to regulate the practice of medicine and to seek to protect the public from ignorant practitioners. It is the business of the State. Dr. Green continues further and asks the question,

"What difference does it make to the average physician whether medical practice laws are passed and enforced? . . . The average physician is in no danger of being barred from following his profession since any standard adopted must be one attainable by the average man. The law-abiding physician takes his examination and pays his license fee. He receives his license, which is supposed to confer on him certain rights and privileges which by inference those who do not possess such a license do not have. But what good does this do him? It does not diminish competition. I venture to assert that there is not a single State in the Union today in which the medical practice act prevents any except the most flagrant quacks and charlatans from carrying on their business unmolested. . . . There are no selfish reasons why medical practice acts should be supported by physicians since these laws are of no help to them either in securing exclusive privileges or in preventing competition. The faker and the quack pay little attention to them, knowing that the chances of punishment for violation are slight and at most will only amount to a fine. The only person inconvenienced is the honorable, law-abiding physician who must pay fees and take examinations, while the charlatan does neither. Today these laws are a handicap to the honest man, but are no hindrance to the dishonest."

In all of these and other similar comments Dr. Green must have had the State of Ohio in mind.

It was undoubtedly necessary for the medical profession to take the lead in advocating our present licensing system and medical laws. Probably no other group could have undertaken such leadership. And for its leadership and many of its accomplishments the profession should be given great credit. The pioneer period is over, however, and the medical profession should no longer have to fight each year in the Legislature as the guardian of the public interests in opposition to other healing professions. The State should now assume its responsibility as pilot of the police power, or, in the words of Dr. Green,

"We (the medical profession) have in the last forty years been assuming a burden which does not belong to us. To this extent we have pauperized the public by depriving them of their own responsibility. As soon as this responsibility and duty is returned to the people, where it belongs, the better it will be for the public and the profession."

**SEPARATION OF LICENSING AND EDUCATING BODIES**—One of the prime reasons for the enactment of the present Medical Practice Act and the creation of the Medical Board was supposed to be the necessity of separating the educating and the licensing bodies from each other. During the third period of regulation in Ohio, from 1868 to 1896, which is designated as the period of medical college control, a graduate of a medical school automatically became, at least for a large part of that period, a licensed practitioner. With limited or no control over the various educational institutions, the evils of such procedure became apparent, and an attempt was made in the present Act to bring about such a separation; that is, to make the State the licensing authority and leave the Medical School to its prime function of educating. Though the State now has some control over medical institutions and grants licenses through the Medical Board, has there actually been a separation of licensing and educating bodies under the present act? Not the separation there should be, for the "Regular," Homeopath and Eclectic representatives on the Medical Board each have more or less official connection with their respective medical schools. And they each have certain responsibilities in the examinations of applicants for license and in correction and marking of examination papers. Naturally, one may inquire, "Where is the line drawn between the member's duty as representative of a School of Teaching or Practice and as representative of the licensing board of the State?" Non-separation applies also to the Osteopathic Examining Committee, consisting of Osteopaths, which, within certain limits, examines Osteopathic candidates for license and at the same time passes upon the sufficiency of the schools from which they graduate.

**THE PROPOSED DEPARTMENT OF MEDICAL REGISTRATION**—Ohio should choose a new policy *now*. Obviously it cannot continue with the present. It has two alternatives. It can begin the splitting-off process and create new

boards of regulation. It is very doubtful, however, if the people of Ohio and their representatives in the Legislature would be willing to embark on a policy which would create additional boards and commissions for the healing profession. Ohio has too many such Boards and Commissions *now*. On the contrary, the trend is toward a single registration and licensing department, and in accordance with this National trend of affairs the creation of a Department of Medical Registration is recommended.

Three other States at least, impressed with the need of some better form of medical practice, have taken the lead in experimentation—Tennessee, Kansas and Illinois. The best legislative expression of the National trend toward a single licensing department is found in the Illinois Act of 1917. Some of the principles expressed may be of help to Ohio. But Ohio must, of necessity, be guided largely by its own history and experience.

It is not contended that the abolition of the Ohio Medical Board and its replacement by a single department of Medical Registration will, in itself, correct the many evils and difficulties grown out of the present system. It is not contended that just because the State of Illinois has created a Department of Education and Registration with much detailed machinery that Ohio should do likewise. It is contended, however, that by reason of the attitude of the public and the professions; because of the deep-seated distrust of the medical profession as organized; because of the monopoly created in the hands of representatives of the profession and the failure to protect the public, a change is needed. It is believed that this proposal which deprives the medical profession—and all the healing professions for that matter—of authority to regulate their own affairs, but at the same time places them in an advisory capacity, paves the way for more extended application of the fundamental principle of education to all medical licensure. If properly conducted, this Department would make it possible to eliminate the suspicion and distrust of the present system. Ohio is ready to make a beginning in this direction.

## RECOMMENDATION

II. The proposed Department of Medical Registration should give immediate consideration to the present educational qualifications of the various healing professions, including both limited and unlimited branches of practice. The proposed department has authority under Section 1274-5 to meet or reject the demands that the educational qualifications of some of the branches be raised and others lowered.

The Section referred to provides that the Entrance Examiners of the State Medical Board shall determine the sufficiency of the preliminary education of applicants for such limited certificate as is provided in Section 1270 of the General Code:

“Provided, however, that the State Medical Board may adopt rules defining and establishing for any limited branch of medicine or surgery such preliminary educational requirements, less exacting than those prescribed by said section, as the nature of the case may require.”

## DISCUSSION

Education is the fundamental basis for licensure of the limited or unlimited practice of medicine. Educational standards are demanded by both the public and the leaders of the medical profession. The great majority of the public want an “educated doctor” though they have not always been so scrupulous about demanding an educated limited practitioner. There is little dispute as to the necessity of real educational qualifications for all healers. Leaders of most of the healing professions demand them. But it is always interesting to notice that whenever legislative recognition is requested for a healing profession, as well as the nursing profession, the demand is always made that in the initial stage all candidates be admitted as practitioners regardless of their educational qualifications, and that, thereafter, higher educational standards be insisted upon for every one else. Educational qualifications written into the Statutes by the Legislature have always created much difficulty, and rarely has the Legislature been willing to leave the determination of educational qualifications for the healing

professions to the discretion of the licensing body. Greater progress in Ohio might be made in this direction if such discretionary power were placed in the hands of the proposed Department of Medical Registration. But even at best it is a difficult problem.

Leaders of the medical profession in the State and in the Nation demand the highest possible educational qualifications as the prime basis of medical license. Various publications of representatives of the Councils of the American Medical Association, as well as officials of the Federation of State Medical Boards, emphasize the importance of educational standards, but they all demand *the single educational standard for all of the healing professions.*

Dr. N. P. Colwell, Secretary of the Council of Medical Education of the American Medical Association, asks,

“When is the fact going to be recognized that one standard—the educational standard—should be applied to every practitioner of the healing art regardless of the particular system of treatment he may represent?”

Dr. Frederick R. Green emphasizes it and so does Dr. David Strickler. Admit the desirability of the educational standard to be a fact; admit that mistakes have been made in enacting legislation which has recognized lower educational qualifications for the limited practitioners—and certainly this is the case in the State of Ohio—how are we going to proceed in Ohio toward the single educational standard in consideration of the conditions which confront us? The principle of the single educational standard is sound. But to attempt to put it automatically in force now would be like attempting to superimpose a model law upon Ohio without recognition of existing conditions.

The best advice along these lines comes to the Committee from Dr. Frederick R. Green, who says, “Each State must work out its own legislative problem.” The application of the principle must, therefore, be worked out by the citizens of this State who are interested in the situation. What procedure then shall be followed?

The single educational standard involves two things:

*First*—Uniform preliminary educational requirements.

*Second*—Uniform courses of instruction and other educational requirements in the medical colleges or other institutions of medical teaching.

Under existing laws the present medical board has—and the new Department of Medical Registration would have (if it is created as recommended)—authority to gradually raise preliminary educational requirements for the license of the limited branches up to a certain standard; that is, the standard prescribed for the practice of medicine.

Section 1270 of the General Code prescribes the preliminary educational requirements for admission to examination for a license to practice medicine as follows:

“The following preliminary educational credentials shall be sufficient:

“A diploma from a reputable college granting the degree of A. B., B. S., or equivalent degree.

“A diploma from a legally constituted normal school, high school or seminary, issued after four years of study.

“A teacher’s permanent or life certificate.

“A student’s certificate of examination for admission to the freshman class of a reputable literary or scientific college.

“In the absence of the foregoing qualifications the entrance examiner may examine the applicant in such branches as are required for graduation from a first-class high school of this state, and to pass such examination shall be sufficient qualification.”

It is probable that these requirements will not be raised for a long time to come, even though the leading medical colleges of Ohio require two years of college work for matriculation as a medical student. It has been suggested to this Committee by the Secretary of the Council of Medical Education of the American Medical Association that the high school requirement be raised to two years of college education. Prior to the war this suggestion was discussed with a number of medical men in the State, all of whom were opposed. Since then the shortage of doctors for military service has undoubtedly made such a suggestion impracticable. Leaving this requirement, then, as it stands, the Department of Medical Registration has an opportunity, under Section 1274-5 of the General Code, to give immediate consideration to the limited practitioners, all of which branches require preliminary educational qualifications less exacting than those prescribed by Section 1270. Since all of the limited practitioners, with the possible exception of the Chiropractics, wish to gradually increase educational qualifications, there should be no objection on their part to consideration of this problem on this basis by the Department of Medical Registration, providing, of course, that each branch be given an opportunity through its Advisory Committee to consult with and assist the Department, as provided for such Advisory Committees in the legislation recommended.

A change in the courses of instruction and other educational requirements in the medical colleges and other institutions of medical teaching will require much longer time. It will be within the power, however, of the Department of Medical Registration to undertake this. Under proposed legislation it would have the power to determine the standing of the schools, colleges, institutions or individuals giving instruction in the limited branches. In this procedure the Department of Registration should, of course, be assisted by the Advisory Committees of the various limited branches involved. The Committee knows of no other way, in view of all the conditions at hand in Ohio, that the single educational standard for the healing professions—which the great majority of all concerned eventually wish to reach—can be brought about unless by fixing such a standard by legislative action immediately following the repeal of all present medical practice laws.

In a word it is recommended that present low grade, preliminary, educational requirements should be gradually raised and courses of instruction in the low grade schools should be gradually improved until they are equal to the highest educational standards of the Medical Practice Act—those contained in Section 1270.

## RECOMMENDATION

III. Legislation should be enacted eliminating the dominating commercial feature of the present Medical Practice Act as contained in Section 1286.

## DISCUSSION

Only now has it become generally understood that the legal, fundamental basis of medical practice is commercial. So far as we can determine from an examination of the Ohio statutes, this feature first appeared in the definition of the practice of medicine in 1868 and has been continued with even greater emphasis in succeeding medical practice acts. Thus, in any criminal procedure, aimed to protect the public from ignorant practitioners, the point to be proven now is, "Did the person concerned receive a fee or compensation—direct or indirect—for services rendered?" The fact that this use of the police power of the State was delegated primarily to detect and prosecute quacks does not justify the emphasis of the commercial factor of medical practice over and above the educational. Should not the point at issue be, "Did the person involved have sufficient educational qualifications and was he licensed to perform the service rendered consistent with the best interests of the patient?" Surely the latter is consistent with the modern trend of education.

The people of Ohio care little whether a violator of the medical laws receives a fee or compensation. They are beginning to understand that the public cannot be protected on this basis. In its relation to the administration of anesthetics, the question is fully discussed in Recommendation IV and also its relation to Christian Science in Recommendation VII. Only a little further explanation here is required to understand what it all means.

The medical quack or faker who hasn't a license and never intended to apply for one can diagnose, advise and prescribe, free of charge, but at the same time pass his patient out into the next room to receive a shower bath at the hands of an attendant, who charges \$10.00 per bath, and thus escape conviction. The Christian Scientist can administer free spiritual healing and not violate the law. The pupil nurse may administer an anesthetic free of charge and not violate the law. Bonesetter Reese, or any one else who wants to, can treat the baseball player's arm free of charge, but pick up the donation on the kitchen table. Other healers can do likewise so long as the right hand doesn't know what the left hand takes. And the public is led to believe that this commercial aspect of the medical practice definition is essential for its protection. It is even argued that it would be impossible to convict for illegal practice without the *fee* provision of the law. This should no longer continue in Ohio.

The legislative proposal, if enacted, would require all those who wish to practice medicine in any of its branches, regardless of compensation, to have a license; it would forbid them to practice medicine which is defined in precisely the same terms as it was heretofore, without a license. In any prosecution to protect the public against ignorant practitioners the only point to be proven would be, "Did the person involved have a license?" This would simply be a matter of official record in the Department of Medical Registration. Nothing in this new legislative proposal of the practice of medicine would prohibit service in case of emergency or the domestic administration of family remedies. These are specifically provided for in Section 1287 and would be precisely the same under the proposed legislation.

It is contended that the legal enactment of this new definition of the practice of medicine would invalidate all of the court decisions in Ohio having to do with medical practice. Suppose it did. If these decisions are based upon the commercial and economic aspect of the practice of medicine then they should be invalidated. They have been of comparatively little assistance in protection of the public and they will be of less in the future. This is an age of education in medical practice and not of commercialism.

PROTECTION OF THE PUBLIC BY PROSECUTION UNDER THIS CHAPTER—No one at all familiar with the facts will contend that prosecutions by the Medical Board under this section have adequately protected the public or resulted in the elimination of even the more pronounced medical quackery. The Board has been exceedingly active in seeking to prevent the illegal practice of medicine (that is, in attempting to prove that certain people illegally practiced medicine because they received a fee or compensation) as the records for the past ten years show, but its activities have little deterrent effect. Since the enactment of the limited practice Act, prosecutions of Chiropractors have been even more numerous. Reports for the years 1917 and 1918 show many convictions, but still illegal practice goes on. What the results will be of prosecutions under the proposed definition of the practice of medicine can only be guessed at. Certainly the procedure would be much simplified, as the matter of proving the existence of a license to practice is only a matter of official record. The main and most important point about the proposal is that it would materially help in laying a firmer educational foundation for all medical license and practice.

# Record of Prosecutions and Results Obtained in Ohio as taken from the annual reports of the State Medical Board for a period of ten years—1904 to 1914.

Year	Prosecu- tions Begun	Convictions	Not Guilty Acquitted Dismissed	No Indictment Returned	Pending at End of Year
1904.....	17	10	3	3	1
1905.....			(No report)		
1906.....	27	8	8	1	10
1907.....	31	11	11	1	8
1908.....	13	4	8	....	1
1909.....	30	14	11	....	5
1910.....	38	21	3	2	12
1911.....	47	36	5	3	3
1912.....	61	33	16	....	12
1913.....	35	18	4	....	13
1914.....	48	31	7	2	8
	<hr/> 347	<hr/> 186	<hr/> 76	<hr/> 12	<hr/> 73

Almost no additional comments are necessary upon this list of prosecutions and the results obtained. Complete record of the disposition of all the cases left pending at the end of each year was not reported. The increase in prosecutions for the years 1911, 1912, 1913 and 1914 is apparently due to a special campaign of prosecution of midwives, there being thirty-three such prosecutions in 1911; and also prosecution of limited practitioners, such as Chiropractors, who have been on the increase in recent years. Prosecutions of limited practitioners have been on the increase since 1914 and 1915.

# Typical Educational Problems That Will Confront the Department of Medical Education

**TWO EXTREMES**—The Osteopaths and the Chiropractors present two extremes of this problem of education. Osteopaths are not limited practitioners, and, therefore, are not subject to the provisions of Sections 1274-5. Their preliminary educational qualifications are fixed in Section 1289 and cannot be lower than the preliminary educational requirements for applicants for examination to practice medicine or surgery. The problem, therefore, in their case is one of their educational schools. During the consideration of the Osteopathic proposal in the last Assembly the proponents of the Bill attempted to prove that the curricula of the leading Osteopathic schools contained requirements similar to those of the best medical schools. This is not a fact as yet, but it could be accomplished within a reasonable time by co-operation of the Department of Medical Registration and the Osteopathic Advisory Committee and the officials of the various Osteopathic schools. It presents a hopeful situation. The Osteopaths themselves recognize the importance of education. They recognized it in their discussion during the last Assembly, and the legislative committee of the Ohio Osteopathic Society fully recognizes it in its communication containing suggestions to this Committee.

The Osteopaths desire regulation of the practice of the healing art be placed under a State board of regents. They recommend three classes of certificates to practice the healing art, as follows:

*First*—Unlimited certificates requiring a preliminary education equivalent to graduation from a high school. A four-year professional course, one year of which at least half clinical. All qualified as above to be eligible and to have the same privileges on passing the examination. Examination in therapeutics to be given by a member of his own school of practice to be appointed by the board of regents.

*Second*—Special certificates requiring the qualifications of (1) plus at least one year of post graduate study and practice in his specialty. This to include all who profess to be specialists or make a specialty of any practice, as surgery; genito-urinary; eye, ear, nose and throat, etc.

*Third*—Limited certificates to be confined within certain well defined limits of practice, to be fixed by a general law and the determination of the board of regents.

Among other things, they recommend that "All hospitals, sanitariums, colleges and other institutions supported, in whole or in part, by public funds to admit all holding unlimited licenses on the same terms." They also ask removal or reconstruction of any clause in existing laws interfering with their rights as osteopathic physicians, so that their signature may be placed on equality with other physicians.

The last recommendation obviously is not one that can be considered by this Committee unless it make the suggestion that undoubtedly all practitioners might be admitted to practice in such institutions when the single educational standard has been complied with. The same suggestion might also apply to their request as to signature of osteopathic physicians being placed on equality with other physicians.

The Chiropractors present the other extreme of this problem of education. There is the problem of both preliminary education and curricula of educational institutions. Evidently some Chiropractors care little about either as the basis for license to practice. It is understood that they recently requested the State Medical Board to lower preliminary educational requirements for Chiropractors to two years of high school with certain equivalents of even a lower grade. On this basis alone they will be among the last to favor a single educational standard in Ohio and the last to comply with it, if it is possible for any of them to do so. The preliminary and professional education of the 262 Chiropractors registered in Ohio, under the waiver clause of the Platt-Ellis law, shows the great danger to the community of waiver clauses in any medical license legislation.

# Statistics Showing Preliminary and Professional Education of Chiropractors Registered in Ohio Under Waiver

College graduates .....	2	Ross College .....	3
Part college course.....	27	Pittsburgh College, D. C.....	2
High school graduates.....	19	Michigan College, D. C.....	15
Part high school course.....	31	Palmer Gregory College.....	18
Common school .....	170	Haney School .....	7
Normal school .....	3	American School, M. T.....	10
No education.....	10	Int. School, D. C.....	4
		Spokane School, D. C.....	1
		Penna. Orthopedic School.....	1
Total .....	262		
Palmer School .....	36	Total .....	176
National School, D. C.....	29		
Carver College, D. C.....	4	No professional schools given	86
Universal School, D. C.....	44		
Weltmer School .....	1		
Chicago Univ., D. C. School	1		262

A study of the 262 affidavits and applications on file in the office of the Medical Board indicates that the information is in some respects incomplete. For example, in 86 cases no professional school is given; in ten instances, no record is made of preliminary education. As to preliminary education, the figures themselves are the only comment necessary.

Some further explanation is necessary as to the professional schools, as the mere statement of the schools enumerated would be misleading. Some of those listed as graduates attended two or three courses at different schools and these courses were determined as post-graduate. When it is taken into consideration that some of the courses in the beginning were one-third correspondence or mail order courses or more, and some were lectures before men who had merely taken a similar course somewhere else, the actual time of study is very much to be questioned. In no instance is it probably more than eighteen months, which is, as a rule, the so-called standard three-year Chiropractic course. The public should not be misled by statements as to graduation from schools of Chiropractic.

It is probable that if inspection were permitted not a single Chiropractic school in this country would meet the test of inspection by the Medical Board or the proposed Department of Medical Registration. Many of the Chiropractic schools in this country conduct courses by mail and admit practically anyone who can pay the price. In fact, many of them are nothing more than "diploma mills." A glance through the catalogues of various Chiropractic schools received by this Committee for inspection is conclusive proof of this statement. If the public who employ Chiropractors could have this information they would be more scrupulous in demanding the educated Chiropractor, few of whom, according to modern standards of medical education, really exist.

Unfortunately, in the Chiropractic profession and no doubt some of the other healing professions, certain leaders and the better educated wish to practice in accordance with the provisions of their license and the law, but are misrepresented by those who have gained control of the political organization of the profession.

This Committee requested the Ohio Chiropractic Association for suggestions which might be helpful in preparation of this report. The chairman of the publicity committee of the Association made some suggestions under date of August 20, 1917. In a word, they are opposed to the legal domination of the drugless profession by the practitioners in medicine. In this they are fundamentally sound. They favor a non-partisan board or department to regulate the healing professions, and under this board or single department head they would expect an Advisory Committee of Chiropractors, to which they are entitled.

## RECOMMENDATION

IV. Legislation should be enacted providing that nothing in the Medical Practice Act shall be construed to prohibit the administration of an anesthetic by a registered nurse under the direction of, and in the immediate presence of, a duly licensed and qualified physician.

## DISCUSSION

It is a matter of common knowledge that from time immemorial in Ohio persons other than licensed physicians—and especially graduate or registered nurses—have administered anesthetics under the direction and immediate supervision of a licensed physician. Anesthetics have been so administered all these years, not only in accordance with universal custom, but in accordance with the generally accepted intent of the law. No doubt as to the legality seems ever to have arisen in Ohio until 1911, or nearly twelve years after the enactment of the present Medical Practice Act containing the present definition of the practice of medicine. Anesthetics are now so administered to a greater extent than ever before, the war having called so many medical men into military service.

The history of the attempt in Ohio to stifle a perfectly proper procedure through the very use of the authority of the State itself is most interesting and has direct bearing upon the legislation recommended. Mere reading of the history itself will justify in the mind of any fair-minded person the enactment of the proposed amendment.

The State Medical Board in 1911 requested the Hon. Timothy S. Hogan, then Attorney General, to render an opinion "as to whether or not it is lawful in this State for a person who is not a registered physician to administer an anesthetic under the direction of a qualified physician." Attorney General Hogan, after some discussion, gave as his opinion: "A person not a registered physician may not administer an anesthetic under the supervision of a registered physician."

The question again came up in 1912, when the Medical Board requested Attorney General Hogan's opinion as "to whether or not regularly qualified dentists are permitted under the laws of this State to administer anesthetics under the direction of a registered surgeon or for surgeons at surgical operations." Attorney General Hogan gave as his opinion, on date of April 4, 1912, "that it is not lawful for regularly qualified dentists to administer anesthetics under the direction of a registered physician or for surgeons at surgical operations not incident to the practice of dentistry."

Nothing whatever is said, however, in either of Attorney General Hogan's opinions as to the now admitted absolute responsibility of the surgeon for the complete operation and procedure and the acts of each and every one of his assistants, as well as his personal liability in case of negligence on his part or the part of his assistants. And so custom continued as before.

Shortly after this the Legislature amended Section 1287 of the Medical Practice Act to insure the legality of the administration of anesthetics by dentists, so that now nothing in the Medical Practice Act can be construed to prohibit the administration of anesthetics by dentists under the direction of a registered surgeon or for surgeons at surgical operations not incident to the practice of dentistry.

Then the matter slumbered for years, or until 1916, when again revived by the State Medical Board. During all this time, so far as is known, no action was taken by the State Medical Board to prosecute anyone for violation of the Medical Practice Act and no attempt was made to test the law. Apparently the only official action taken by the Medical Board, except to favor the amendment insuring the legality of the administration of anesthetics by dentists, was the adoption of the following resolution after the opinion handed down by Attorney General Hogan in 1911.

"Resolved, by the Ohio State Medical Board, that the administration of any drug or agent to procure general anesthesia is interpreted by this Board as constituting the practice of medicine, and the person so administering the said anesthetic must be duly quali-

fied to practice medicine and surgery as prescribed by the statutes governing the practice of medicine in the State of Ohio."

In 1916, however, the State Medical Board, prodded by the State Anesthetists' organization, consisting of probably not more than fifty persons, attempted to take things in hand and discipline one of the leading hospitals of the State and thereby serve notice on others throughout the State that anesthetics could not be administered by anyone except a licensed physician. But of the greatest significance, the Board did not proceed under the Medical Practice Act, but sought a conclusion in the matter by the use of an ambiguous clause (Section 1295-6) in the nurse registration law which was enacted April 27, 1915. This procedure is summed up in the following resolution adopted by the Board at that time:

"Whereas: it has been charged in a petition, signed by many well known and reputable physicians, that the law regarding the administration of anesthetics by others than licensed physicians has been systematically violated by Lakeside Hospital, Cleveland, Ohio, and that courses in anesthetics are given nurses in Lakeside Hospital for the purpose and with the intent of violating the above mentioned law, therefore,

"BE IT RESOLVED that until these charges are disproven and such courses, if given, discontinued, that all recognition of the Lakeside Hospital as an acceptable Training School for Nurses be withheld and recognition of its graduates as Registered Nurses shall be denied."

Such procedure was a serious admission on the part of the State Medical Board. Lakeside Hospital of Cleveland was the institution singled out for this procedure. Without even notifying the institution of its proposed action, the Medical Board declined to recognize the general nurse training school connected with this hospital and without giving anyone an opportunity to be heard before the decision was made. The reason for such action was not that the training school did not meet the requirements of the law (the training school being one of the best in the State), but because the Hospital conducted a department which had no connection with the training school in which graduate nurses were taught to administer anesthetics.

Protest was made to the Medical Board and a hearing was granted, but with no result. After much negotiation, some sort of a compromise was reached so far as Lakeside Hospital was concerned. Anesthetics, however, are still being administered under direction and supervision by persons other than physicians, in hospitals and outside of hospitals in the State.

No action was taken with respect to the Medical Practice Act and the administration of anesthetics in the 82nd General Assembly. However, a bill was introduced to lower certain important educational requirements of the Nurse Registration law. In committee an amendment was added repealing an ambiguous clause and thereby taking away the unnecessary authority of the State Medical Board to define hospitals as such. This bill as amended passed both branches of the Legislature but was vetoed by the Governor because "the Ohio standard of nursing is below that of many other States now."

Since then this Committee has given much time and thought to the study of this question. Two lines of procedure have been followed:

*First*—The Attorney General has been requested to render a series of opinions having to do with the administration of anesthetics;

*Second*—A most careful study of all the medical practice acts in all the States of the Union has been made with especial reference to their relation to the administration of anesthetics.

1. **OPINIONS OF THE ATTORNEY GENERAL**—It is recognized, of course, that the opinions of the Attorney General do not constitute law, just as the hospitals regarded Attorney General Hogan's opinions in 1911 and 1912, but it was felt that a series of opinions at this time would throw additional light upon the anesthetic question in its relation to the Medical Practice Act. Three opinions were secured. The following question was submitted to the present Attorney General for an opinion:

"As a member of the Legislature, I desire an opinion as to whether the mere giving of the various drugs used in surgical anesthesia, given only under the personal direction and in the presence of the responsible operating surgeon, himself a licensed medical practitioner of medicine, but who has prepared himself or herself, by satisfactory study and preparation, constitutes in itself the practice of medicine under the provisions of the Ohio Medical Practice Act."

In Opinion 528, after discussing the question, the Attorney General stated:

"I advise you that the giving of the various drugs to produce anesthesia when surgical operations are being performed constitutes the practice of medicine under the provisions of the medical laws of this State."

A second opinion of the Attorney General was requested to aid in interpreting the following resolution adopted by the State Medical Board in 1916 relative to intern service.

"Whereas the State Medical Board considers hospital internship as furthering the better medical education of prospective practitioners,

"**BE IT RESOLVED** that unsalaried intern service shall be considered as a part of the medical education course, and holders of such intern appointments shall not be required to be licensed in Ohio during their term of service, provided such interns at the time of their appointment file with the Secretary of this Board their respective preliminary and medical qualifications, the date and term of the service, and the name of the hospital.

"**BE IT FURTHER RESOLVED** that salaried intern service shall be considered as the practice of medicine and the holders of such intern appointments shall be required to secure licenses in Ohio, and

"**BE IT FURTHER RESOLVED** that all previous rulings of this Board in conflict with these resolutions are hereby rescinded."

Bearing in mind that administration of anesthetics is often one of the duties incidental to intern service, and that the legal basis of the practice of medicine in Ohio is the receiving of a fee or compensation, direct or indirect, information was desired as to how the Board distinguished in its resolution between "salaried" and "unsalaried" intern service. This is an important distinction because hospitals have various ways of compensating interns. The question asked of the Attorney General was as follows:

"Can the receipt of board, lodging, laundry, uniform, instruments and allowance for incidental expenses from the hospital by holders of intern appointments be considered as the practice of medicine within the meaning of Section 1286?"

In Opinion 377—the Attorney General gave as his opinion that

"board, lodging, laundry, instruments, uniforms, allowance for incidental expenses given to holders of intern appointments cannot be construed to be salary under the resolution of the State Medical Board herein quoted or the receipt of the above mentioned items cannot be considered as the practice of medicine within the meaning of Section 1286."

Again bearing in mind that hospitals have different plans for compensating nurses for services rendered, and that the legal basis for the practice of medicine is the receipt of a fee or compensation, and that nurses do administer anesthetics under direction, a third opinion was sought from the Attorney General. The question submitted was:

**"I desire to ask your opinion whether a nurse receiving merely board, lodging, laundry, instruments, uniforms, and sometimes allowance for purely incidental expenses, for administering an anesthetic, is practicing medicine under General Code Section 1286."**

A very long opinion was received under date of September 24, 1917. In Opinion 890 the Attorney General, in his discussion, practically contradicts Opinion 377 but at the same time answers the question propounded.

**"I advise you that if a nurse receives board, lodging, laundry, instruments, uniforms, and sometimes allowance for purely incidental expenses for administering anesthetics, it is to be considered a practicing of medicine under General Code Section 1286."**

From the following summary of this procedure it will be clear that little additional light has been thrown upon the problem. In a word, the Attorney General practically says in these opinions: If an *intern* administers an anesthetic for compensation *he does not* violate the law. If, on the other hand, a *nurse* administers an anesthetic for compensation *she does* violate the law. *But if either one of them, or any other person, skilled or unskilled, administers an anesthetic, free of charge, they do not violate the law.* In other words, this question seems, under existing law, to be *merely a commercial one* and the interest of the public is *only secondary*. Nothing whatever is said, however, in Attorney General McGhee's opinions as to the now admitted absolute responsibility of the surgeon for the complete operation and procedure and the acts of each and every one of his assistants, as well as his personal liability in case of negligence on his part or the part of his assistants.

**2. MEDICAL PRACTICE AND THE ADMINISTRATION OF ANESTHETICS IN OTHER STATES**—That information from other States regarding this anesthetic problem might be available for purposes of this report, a communication was sent and followed up by others as necessary, to the secretaries of the various State medical boards. It contained the following questions:

*First*—Does the mere giving of the various drugs used in surgical anesthesia given only under the personal direction and in the presence of the responsible operating surgeon, himself a licensed medical practitioner, by a person not a licensed medical practitioner, but who has prepared himself or herself by satisfactory study and preparation, constitute in itself the practice of medicine under the provisions of your Medical Practice Act?

*Second*—If such a person (not a licensed medical practitioner and rendering the same service and under the same conditions as described in Question 1) does not receive a fee or compensation of any kind, direct or indirect, does such *free* service constitute in itself the practice of medicine under the provisions of your Medical Practice Act?

*Third*—Are your answers to the above questions based upon specific provisions of your Medical Practice Act or other State laws, or upon the opinion of your Attorney General? If the former, will you kindly send me a copy of your Medical Practice Act, marking the exact words or sections directly or indirectly bearing upon this question; and if the latter, will you kindly send me a copy of the opinion of your Attorney General?

A summary of the replies from forty-nine States and Territories, including the District of Columbia and Porto Rico, reveals most interesting information. Two points need to be emphasized:

*First*—There is much similarity in the definition of medical practice as contained in the various Medical Practice Acts.

*Second*—Question 1 is identically the same question submitted to the Attorney General of Ohio for an opinion.

## Summary

*First.* Does the mere giving of the various drugs used in surgical anesthesia given only under the personal direction and in the presence of the responsible operating surgeon, himself a licensed medical practitioner, by a person not a licensed medical practitioner, but who has prepared himself or herself by a satisfactory study and preparation, constitute in itself the practice of medicine under the provisions of your Medical Practice Act?

Thirty-six specific answers were made to this question. Of this number ten answered "yes."

(The answer of Louisiana, which was "yes," was qualified by the statement:

"The Louisiana law specifically prescribes that it is unlawful for any nurse to administer any form of anesthesia to any person under their care EXCEPT AS DONE BY THE DIRECTION AND UNDER THE SUPERVISION OF A COMPETENT PRACTICING PHYSICIAN.")

Twenty-six States answered "no." One answered: "I think not." Twelve did not specifically answer this question.

*Second*—If such a person (not a licensed medical practitioner and rendering the same service and under the same conditions as described in Question 1) does not receive a fee or compensation of any kind, direct or indirect, does such *free* service constitute in itself the practice of medicine under the provisions of your Medical Practice Act?

Thirty-two specific replies were made to this question. Six answered "yes." Twenty-three answered "no." One answered "unless a fee were charged it would not." Two answered "no distinction" (between Questions 1 and 2).

*Third*—Are your answers to the above questions based upon specific provisions of your Medical Practice Act or other State laws, or upon the opinion of your Attorney General?

Thirty-one States answered this question specifically. Of this number ten based their answers to Questions 1 and 2 upon the opinion of the Attorney General of their State; of the ten, six replied "no" to Question 1 and four "yes." Two based their answers on decision of the Supreme Court of the State; one of these answered Question 1 "yes"—the other "no." Six based their answers upon the Act itself; of this number five answered "no" to Question 1 and one answered "yes." Two States based their answers upon ruling of the Medical Board; both States answered "no" to Question 1. One based its answer on the Act itself as interpreted by the Supreme Court and answered "yes" to Question 1. Two States which answered "no" to Question 1 based their answers on the Act and opinion of the Attorney General. One State answered "no" to Question 1 and based its answer on "existing conditions." One State, answering "no" to Question 1, stated that there was no law or opinion on the subject in the State. Other miscellaneous answers to Question 3 gave most interesting information: for instance, the State Board of Medical Examiners of Georgia in 1915 passed a resolution that the giving of an anesthetic in that State is the practice of medicine.

"This opinion was formed without any legal advice. . . . After the passage of the resolution the attorney of the Board and the Attorney General both gave informal opinions that the giving of an anesthetic by any one under the direction and supervision of the doctor in charge of the case does not of itself constitute the practice of medicine."

Louisiana based its answer to Question 3 upon the medical law itself, which specifically provides that nurses may give anesthetics under the direction of a licensed physician. The State of Maine based its answer on neither the Act nor opinion of the Attorney General, and adds that anesthetics are not mentioned

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in the Maine law—"nurses, when training in our hospitals, give ether under the direction of the head nurse." Other answers to this question are interwoven with the answers to the other questions. Some States, for example, answered all three questions together.

Iowa, Minnesota, New Hampshire, New Jersey and New Mexico answered that the laws of their State did not cover Question 1, which is the main point at issue. The District of Columbia and Florida agreed to submit the question to their board. No reply has been received. In Maryland the Board of Medical Examiners has not expressed an opinion, nor have the State authorities upon any of the propositions submitted in the communication. In South Carolina the question has never been raised. In Washington the questions are not covered by the Medical Practice Act. The Kansas Board has adopted no resolutions on this subject. In Montana the records of the Board of Medical Examiners failed to disclose any ruling on the subject—"I might state that in hospitals it is not unusual for an anesthetic to be given by an unlicensed physician, intern or graduate nurse," says this reply. The Attorney General of Montana says:

"Our medical practice act does not prescribe or mention anything whatever with reference to the use or giving of various drugs used in surgical anesthesia and this department has not given an opinion on the same."

Certainly this array of evidence gathered from almost all of the States in the Union, considered jointly with all the facts of the case in the State of Ohio, makes it plain that as a matter of justice to all concerned, the 83rd Assembly should enact an anesthetic amendment to the Medical Practice Act as recommended.

The sum total of all the favorable evidence gathered from the forty-nine States and Territories makes it plain that the responsibility for the complete operation, including every act of each and every assistant, and including the anesthetist, even though a physician, dentist, or an unskilled person or a registered nurse, rests solely and completely upon the surgeon. This matter of responsibility on the part of the surgeon is generally conceded in Ohio and is the most powerful reason of all for the enactment of the proposed legislative amendment. The course of action followed is a glaring example of two serious fundamental defects in our present Medical Practice Act:

*First*—The Board has apparently at no time considered the real interests of the public in this matter. Rather, in response to a demand of a small organized group of anesthetists, claiming in large degree to represent the medical profession, the Board has sought to protect the interests of that group. It has attempted to utilize both the Medical Practice Act and a section of the Nurse Registration law for the benefit of the medical profession.

*Second*—In response to this demand the Medical Board has been guided in the extreme by the chief commercial feature of the Medical Practice Act. Strong evidence of this is found in the brief read before the State Medical Board, and now on file with the Board, by a representative of the Anesthetists' Association. The brief bristles with commercialism, as the following questions show:

"In abolishing the nurse anesthetist (he should have said, 'in ATTEMPTING to abolish') the Ohio State Medical Board fully realized that her employment constituted an economic menace in many respects. In utilizing her services as a salaried attache, certain surgeons and hospitals have been, and are now, enabled to undersell the anesthetic services of their confreres and competitors. Fortified with endowments such individuals or institutions have not hesitated to reduce anesthetic fees to an irreducible minimum—to a basis upon which no self-respecting, independent qualified anesthetist can make a decent living or MAINTAIN AN ETHICAL STANDING IN HIS PROFESSION. . . . As for underpriced fees, especially when they are accorded patients who are financially able to pay the proper fees—THESE FEES CONSTITUTE AN ECONOMIC CRIME AGAINST THE WELFARE OF THE ENTIRE PROFESSION."

This brief is commended to all those who would learn further of some of the commercial aspects of modern medicine. Further information as to this brand of medical commercialism will be found in the demand of the Interstate Association of Anesthetists upon the Ohio State Medical Association to protect the interests of the anesthetists. Apparently, in this entire course of action, so far as the Board and the Anesthetists' Association is concerned, the public interests have not been considered. And the 80% of the medical profession, which is sincerely interested in the public welfare, but at the same time little interested in medical legislation, has to suffer by such misrepresentation.

### RECOMMENDATION

V. Legislation should be enacted amending Sections 1295-5 and 1295-6 of the General Code (the Nurse Registration Law) to deprive the State Medical Board of any authority whatsoever over hospitals as such for purposes not really necessary in the supervision of nurses' registration.

### DISCUSSION

Little discussion, if any, is needed in further support of this recommendation. The unwarranted and illegal use of this section of the Nurse Registration law by the State Medical Board is fully discussed under Recommendation IV. There is every reason to believe that even the present Medical Board would not oppose enactment of this amendment. Certainly the great majority of the medical profession will not oppose it and, undoubtedly, it will be favored by the great majority of the nursing profession, leaders and members of which have expressed disapproval of the use of the Nurse Registration law for purposes for which it was not intended. Opposition may, perhaps, be expected from one or two leaders connected with the State Association of Anesthetists.

(This same amendment is referred to in the legislative recommendations having to do with hospitals.)

### RECOMMENDATION

VI. Legislation should be enacted to regulate and control the practice of Optometry.

### DISCUSSION

"Dealing in vision" has never been regulated in Ohio by law, although various legislative proposals have been introduced in the General Assembly for that purpose. In the 78th General Assembly an Optometry bill passed both branches, but was vetoed by Governor Harmon. His veto is not only a warning to the public but is a classic on the subject of Optometry. It is accordingly included:

"To the General Assembly: Amended Senate Bill No. 51, entitled 'A bill to regulate the practice of optometry,' creates a board of five members to examine and license persons to practice 'optometry,' which it defines as 'measurement of powers of vision and adaptation of lenses for the aid thereof by any means other than the use of drugs, medicine or surgery.'

"The express exemption of mere dealers in spectacles and eye glasses, and the requirement that the examination shall include 'anatomy and physiology of the eye' as well as 'optics' and such other subjects as license is to cover something more than the mere commercial supplying of eye lenses to customers. That something is, necessarily, from its nature, a part of the field covered by medical science. Our statute (G. C. 1286) includes in the definition of that field the prescribing, advising, recommending, administering or dispensing, for a fee or compensation, not only of drugs or medicines, but of appliances for the cure or relief of a bodily injury, infirmity or disease. It is beyond question that the eye is so connected with the general system that the subject of impaired or imperfect vision cannot properly be considered as though it were an independent function, and it is conceded that, especially with children, the condition and needs of the eye cannot, in a great many cases, be known without the application of drugs for dilation, as well as the examination of other bodily conditions.

**A STEP DOWNWARD**—"So to set men who have not themselves had medical education and stood the careful tests required by law in the interest of the public health to examine and license others to deal with one of the most delicate and important organs, appears to me a step downward, leading to grave peril. And if what may be called the mere mechanical treatment of defective vision is to be made a special branch of medical practice, it would be under the jurisdiction of the State Medical Board, so that the proper qualifications may be judged by men of approved education and training in the general science which deals with the ills of the human body. But I know of no special branch of medical practice which is itself split up as is proposed here. All other special branches are complete in themselves, and no one is permitted to engage in them unless he is qualified to diagnose and deal with cases in all the aspects they may present. One who is not skilled in optical surgery and medicine surely cannot be safely trusted to tell whether these are not required instead of mechanical treatment he is able to give, and the time lost in discovering the need of these will often make resort to them useless.

**SCHOOL NOT ADEQUATE**—"Schools of Optometry are mentioned in the bill, but it is shown by the evidence presented to men that such as they are generally, if not always, lack the requirements of proper education for so important an art as treating the human eye. Many of them are mere correspondence schools. It is quite true that dealing with vision ought to be strictly regulated, because, to common knowledge, much harm is done by itinerant and other persons who profess to supply the needs of the people. But I do not think this bill furnishes the proper means of regulation. On the contrary, by giving the authority of the State, many who lack the proper education and training, as this bill would, in my judgment, do, the public would be misled as to their qualifications. Those so lacking would undoubtedly outnumber those who merely, by special talent and practice, would acquire a certain proficiency, as men do in all callings. Druggists often gain a knowledge of diseases and their remedies as extensive as some physicians have, yet they are not permitted to apply that knowledge in practice, because such cases are exceptional.

"For these reasons I herewith file the bill with the Secretary of State, unapproved.  
"JUDSON HARMON,  
"Governor."

During the 81st General Assembly an attempt was made to secure legislation recognizing the practice of Optometry. It was specifically included in the Platt-Ellis bill, dealing with all the so-called limited practitioners, but was stricken out by amendment in the Senate, and the bill, as finally passed and approved by the Governor, did not specifically mention Optometrists or Optometry. In Section 1274-1, however, which enumerates the limited branches of medicine to be regulated by the State Medical Board, is included the following general clause:

"and such other branches of medicine and surgery. . . . that may now or hereafter exist."

The State Medical Board soon took the position that the practice of Optometry is included as one of these branches. Certain Optometrists, however, disputed this point and, although many applications with the license fee were filed with the State Medical Board by Optometrists as soon as the law became effective, their representative brought suit against the State Medical Board, which is commonly known as *Barr vs. the State Medical Board*, which is still pending (January 2nd, 1919,) in the Supreme Court of Ohio.

An Optometry bill was introduced into the 82nd General Assembly and defeated in the Senate primarily for the reason that the status of Optometry was then pending in the courts. There was every reason to believe that the State would be active in seeking a final adjudication. Today, however, and largely, no doubt, because of the delay and inactivity on the part of the State, this case is still pending, although counsel is trying to agree upon a final entry for dismissal of the case. Apparently the State realizes that the Optometrists are right in their claim that the State Medical Board has no authority to regulate the practice of

Optometry as a limited branch. Legal recognition of Optometry, therefore, rests with the General Assembly.

This Committee has had some correspondence with the State Association of Optometrists. In December, 1917, the Committee asked the Association to make suggestions relative to their relations to the Medical Practice Act and to file a brief. Their general attitude is set forth in the following three paragraphs quoted from a letter under date of February 15, 1918, and signed by the President and Secretary of the Ohio State Association of Optometrists.

"Our association, in so far as it is concerned with THE REGULATION OF THE PRACTICE OF OPTOMETRY TO THE STATE, desires strict regulatory laws for its regulation such as now exist in all the States excepting seven, of which seven Ohio is one. We know of no just reason why such a law should not be passed in the State of Ohio regulating the practice of Optometry when similar laws have been passed in practically all the States, and especially the larger and most populous ones.

"We have no criticisms or suggestions to make 'about the present Medical Practice Act.' We feel that we are not concerned therewith except as citizens of the State, but we would have objections through the attempting application of this Medical Practice Act to the business of Optometry, all of which objections are fully set forth in the briefs of counsel in the case of the Optometrists vs. The State Medical Board, which has been pending since July 28, 1915, in the Court of Common Pleas of Franklin County, Ohio. We have therein contended, now contend, and shall contend, that the State Medical Board under the present Medical Practice Act has no jurisdiction over Optometry.

"As to any new laws to be suggested by us we most respectfully refer your committee to the Optometry bill introduced in the last Legislature, of which we are sure you have a copy, or if you have not, we shall be glad to present you with one."

In deciding upon a plan for the regulation of Optometrists, Ohio has three alternatives as a basis for legislative action:

*First*—Place the practice of Optometry under control of the State Medical Board. This would obviously be unfair; just as unfair as it is to delegate the police power of the State to representatives of the medical profession to regulate other limited branches or to regulate themselves.

*Second*—Create a special board of regulation, as the Optometrists desire, consisting, undoubtedly, of representatives of the Optometry profession to whom would be delegated police power to regulate their own affairs. This is fundamentally wrong in principle as set forth throughout this report.

*Third*—Recognize the practice of Optometry as a limited branch of medical practice and place authority for its control in the hands of the Director of the Department of Medical Registration and give him the assistance of an advisory committee of Optometrists. It would be dangerous and absolutely inconsistent with public welfare to include a general waiver clause as contained in the 1917 bill in any Optometry legislative proposal which would admit, without examination, the existing horde of spectacle venders or others who have technically practiced for five years but who are absolutely unqualified to practice as Optometrists.

Adoption of the third alternative is recommended. Any Optometry legislation enacted should not provide education qualifications. If Optometry is, by legislation, made a limited branch of the practice of medicine then the Department of Medical Registration should, under the authority of Section 1274-5, prescribe educational qualifications and conduct examinations for all (existing and future practitioners) who may desire a license to practice Optometry. The Optometrists of Ohio, through their Advisory Committee, should have opportunity

to assist in the determining of these educational qualifications and the preparation of the examination.

Again, it should be emphasized that the practice of Optometry never has been, and is not now, recognized by law in Ohio. Any spectacle vender or other person who desires to pose as an Optometrist is not prohibited from doing so and by law is not interfered with. The proposal, therefore, for educational requirements and examination for *all* who wish a license should result in added protection to the public from such ignorant practitioners. It will also afford an opportunity for the Optometrists of this State, a great many of whom are well qualified to meet reasonable educational requirements and to pass an examination, to get recognition and a license. As Governor Harmon said in his veto:

**"Dealing with vision ought to be strictly regulated because to common knowledge much harm is done by itinerant and other persons who profess to supply the needs of the people."**

Bona fide Optometrists of Ohio should welcome this proposal.

Of great importance, it should be remembered that the usual definition of Optometry makes it a drugless method of treatment. It is generally considered that Optometrists, in their practice of "the measurement of the powers of vision and the adaptation of lenses for the aid thereof," treat the eye as a function independent of any other function in the body. *This seems strangely inconsistent but should have no weight in itself in any legislative proposal.* Here again is emphasized the now generally accepted fundamental principle that the State is not concerned in the relative scientific value of different methods of treatment.

## RECOMMENDATION

VII. Legislation should be enacted exempting the practice of Christian Science from the provisions of the Medical Practice Act and, therefore, from control of the State Medical Board.

## DISCUSSION

In the 82nd General Assembly the Christian Scientists presented a bill, which, if enacted, would have exempted from the provisions of the Medical Practice Act those who seek to prevent and cure disease by spiritual means or prayer. While it passed the Senate, it was overwhelmingly defeated in the House, largely through the efforts of the organized medical profession and assistance of organized religion. Several interesting facts incidental to the consideration of this proposal by the Assembly should be noted.

*First*—The bill was defeated for one reason—as a menace to public health. Great doubts were raised in the minds of many members as to the attitude of Christian Scientists toward contagious and infectious diseases and their willingness or ability to report them in accordance with the quarantine and sanitary laws of the State.

*Second*—The bill did not specifically mention Christian Science. It was general in its permissive terms, and with the result that many feared that impostors, soothsayers and others might take advantage of the Act to practice under the guise of religion.

*Third*—It was shown that Christian Scientists practice practically as they please in the cities of Ohio; that they may freely give their services without violation of law, but that, under the terms of the present Medical Practice Act, it is illegal for them to receive compensation. These, as well as other factors, indicated a need of further information on this subject and have prompted extended investigation.

At this point it should be said that probably the great majority of the medical profession of Ohio, in opposing the exemption of Christian Scientists from the Medical Practice Act, have acted in good faith and through a desire to protect the public. The whole basis of medical treatment is diagnosis. Many advanced thinkers in the profession hold that if a man is educated sufficiently to be able to make an accurate diagnosis, the matter of treatment is relatively unim-

portant. This fundamental conflict between the one who practices medicine and the one who approaches the question from the standpoint of a religion has been the cause of difference. It certainly is true that where the Christian Science practitioner fails, the physician is the man who views the result of such failure. Where, for example, the Christian Science practitioner fails to recognize a case of diphtheria until the disease is well advanced, the physician, who is later called in, has presented to him in a forcible manner the danger of such failure. He finds that not only is treatment of the patient difficult in the advanced stage, but the entire neighborhood may have been subjected to infection. He, therefore, is quite naturally opposed to a system under which, through failure to utilize proved diagnostic measures, such a dangerous condition is likely to occur. Physicians, therefore, by reason of their contact with "end results" in cases of failure, have opposed the practice. A large number of physicians freely express relief that they are relieved of the care of a certain type of patients who seem to respond most readily to Christian Science methods, and many criticize their profession for failure to devote more attention to the mental and psychological phases of treatment.

Christian Scientists were invited to present their claims in writing to this Committee. The invitation was accepted. A special brief\* was prepared and submitted not only to this Committee, but to a committee appointed to revise the medical statutes in the Province of Ontario, by Judge Clifford P. Smith, of the Committee on Publication of the Christian Science church. It sets forth the following reasons why any statutes recommended by this committee should recognize these rights:

"First—Freedom from any statutory monopoly of all services for the benefit of health;

"Second—Freedom from any statutory regulation that would be unreasonable or unnecessary;

"Third—Entire freedom for the practice of the Christian religion."

The brief contends that such rights are recognized by any just or wise conception of government. It maintains, in a word, that Christian Science healing is not medical practice and sets forth extended arguments for this contention. It answers many of the objections to the practice of Christian Science raised during consideration of the bill in the last Assembly. In it may be found an exhibit showing where the laws regulating the practice of medicine expressly recognize the rights of citizens who may prefer the practice of Christian Science or other religion.

Some thirty States have enacted legislation exempting those who practice Christian Science from the provisions of medical practice laws. To these States the Committee has turned for information. Surely the experience of other States with such laws should be of assistance to Ohio.

The following communication was sent to the Medical Boards or Boards of Health, or other boards, in the various States having responsibility for the administration of the medical practice laws:

"Dear Sir:

"As a member of a committee appointed by the Governor of this State to make recommendations relative to our Medical Practice Act, I am writing to the Secretaries of the Medical Boards in the various States for certain information.

"At the present moment I am seeking information about the practice of Christian Science from the States which have exempted it from the provisions of the Medical Practice Act.

(Quote exemption.)

"Will you kindly inform me what has been the result along the following lines of this general exemption?

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\*This brief has been published and widely circulated in Ohio. Copies have been sent to members of the 83rd Assembly by the Ohio Committee on Publication of the Christian Science Church.

"First—Have impostors taken advantage of this exemption to represent themselves as soothsayers, astrologers or the like by claiming to practice in accordance with the religious tenets of some church?

"Second—Have the Christian Science practitioners been reasonably considerate of the provisions of the sanitary code of the State? Have they failed in any degree to report contagious and infectious diseases as required by law? Is the exemption a menace to the public health of your State?

"May I also ask if you require a list of part time and full time Christian Science practitioners to be filed from time to time with your board? Would there be any advantage in your having such a list?"

The list of States and Territories to whom this communication was sent includes the following:

Alaska	Kansas	New York
Arizona	Kentucky	North Carolina
Arkansas	Louisiana	North Dakota
California	Maine	Oklahoma
Colorado	Massachusetts	South Dakota
Connecticut	Michigan	Tennessee
Florida	New Hampshire	Utah
Georgia	New Jersey	Vermont
Hawaii	New Mexico	Virginia
Illinois	Washington	Wisconsin

Replies were received from all but one State. In most instances replies were carefully prepared. A digest of the information contained therein is most interesting and should be of unusual value to the Legislature in its consideration of the proposed Christian Science amendment.

## Digest of Information Contained in the Letters

Have impostors taken advantage of this exemption to represent themselves as soothsayers, astrologers, or the like, by claiming to practice in accordance with the religious tenets of some church?

*Twenty-four States* replied specifically to this question. *Twenty States* replied that no impostors had taken advantage of the exemption. *Four* replied that impostors *have* taken such advantage as follows:

"The department has met with some cases where unlicensed persons have attempted to practice under the guise of soothsayers, etc., and such persons have been warned that they must limit their practice to mental or spiritual means."

"I believe impostors have taken advantage of this exemption. We have no way of checking them up at the present time. I do know of cases of cancer and other incurable diseases that these people frequently treat."

"Impostors and quacks have taken, and are now taking, advantage of the religious clause and continue to humbug an ever-credulous public."

"We have certain impostors in this State who represent themselves as soothsayers, healers of various cults, etc., who are not exempted under the medical practice act but who have practiced the so-called art of healing without the use of drugs, and, therefore, are exempt under the law from prosecution. . . . There is another class who use drugs in the process of healing but who make no charge directly to the patient, but who allow them to pay what sums they desire."

Have the Christian Science practitioners been reasonably considerate of the provisions of the sanitary code of the State?

*Seventeen States* gave specific answers to this question. Of this number *fifteen* replied that Christian Scientists *have been* reasonably considerate. *Two States* replied that Christian Scientists *have not been* reasonably considerate of the sanitary code. These two replies are as follows:

"They have not invaded us to any but an infinitesimal extent, but I have found those few to be entirely without restraint and recognize no claims from a sanitary or public health standpoint."

"Christian Science practitioners are the greatest menace to our children. The child is treated, usually until beyond medical aid, for diphtheria, scarlet fever, etc. Finally, when it is moribund, the health authorities are notified and physician summoned. Contagion, of course, is scattered abroad."

In one of the States replying to this question, the State Department of Health answered that Christian Scientists had been reasonably considerate while the State Medical Board answered "no." In another State both the Medical Board and the Health Department answered that Christian Scientists had been reasonably considerate.

Have they failed in any degree to report contagious and infectious diseases as required by law?

*Twenty States* replied specifically to this question. *Ten* replied that Christian Scientists *have failed* in some degree, while *ten* reported that they *have not* failed to report as required by law.

Is the exemption a menace to public health?

*Twenty-one States* replied specifically to this question. *Ten* stated that the exemption *is not* a menace; *ten* stated that it *is*. One stated "not known"; one

stated elsewhere in its reply, "They jeopardize health." In one State the Department of Health says the exemption is *not* a menace to health while the Medical Board says it *is*.

May I also ask if you require a list of part time and full time Christian Science practitioners to be filed from time to time with your board? Would there be an advantage in your having such a list?

No State requires the filing of a list of part time or full time practitioners, but eight States feel that there would be an advantage in having such a list. Eleven States feel there would be no advantage. The replies contain several very interesting comments. For example:

"It is my personal opinion that it is time to stop fighting all these people. The sooner they are recognized and treated with perfect respect the less trouble we will have with them. All these cults are merely protests against the inefficiency of medical training and practice."

"As we have been unable thus far to receive prompt and complete reports of notifiable diseases from physicians we cannot hold the Christian Scientists responsible as yet. . . . They have shown a willingness to be placed under restriction when contagious diseases existed."

One official thinks that the medical practice act "should not exempt the Christian Scientists so far as making charges or fees are concerned."

Surely some helpful conclusions can be drawn from this information which comes from medical officials, who, on the whole, have not been wholly in sympathy with the practice of Christian Science and in many instances consider it the practice of medicine rather than the practice of religion. Certainly Christian Scientists cannot be held responsible for the existence of a few impostors, and, admittedly, from the information given above, the number is limited. The replies indicate a strong willingness and tendency on the part of Christian Scientists to comply with the sanitary rules and regulations as to reporting contagious diseases. And, very apparently, medical officials in but a few States consider Christian Scientists a menace to public health. On the whole, the information secured favors Christian Science and would seem to justify the exemption from medical practice Acts in force in thirty other States.

As a result of the arguments presented to the Committee; information secured by the Committee; and also of the study of the Christian Science exemption laws in the thirty States, an amendment to the Ohio Medical Practice Act is recommended. Every possible safeguard for the public has been included in this amendment. The experience of other States, as expressed in their statutes, is expressed in the proposed amendment. If this amendment is enacted and properly enforced, the public need have no fear of the practice of Christian Science. Indeed it may be said with truth that Christian Scientists will not burden the Department enforcing this law, for they are intelligent and law-abiding citizens. The principle upon which this recommendation that Christian Scientists be exempt from the Medical Practice Act is based is sustained and supported by one of the foremost medical authorities in the United States, Dr. David A. Strickler, Secretary of the Colorado State Board of Medical Examiners and President of the State Medical Boards of the United States. Dr. Strickler's opinion is law amongst the leaders of the organized medical profession in America. In a paper read at the Congress of Medical Education in Chicago, February 5, 1917, entitled "The Problem of Medical Cults," Dr. Strickler stated in his following conclusions, which are based upon experience of more than a quarter of a century before legislative bodies:

"First—In the present chaotic state of therapeutics, using the word in its broad sense, the State is not concerned in the relative scientific value of different methods of treatment.

"Second—All those who confine their efforts at healing to prayer in obedience to the tenets of an established church, and who do not pretend to make a physical diagnosis, shall be exempt from the application of the educational standard."

## Christian Scientists and the Reporting of Contagious Diseases Under Ohio Law

It should be borne in mind that the Ohio Medical Practice Act as now constituted does not mention the practice of Christian Science or Christian Scientists. Yet, as a result of the decision of the Supreme Court in the case of *State vs. Marble* (72, O. S. R. 21), the practice of Christian Science for a reward or compensation has been considered the practice of medicine. And to this extent Christian Scientists are supposed to be subject to the enforcement of the Medical Practice Act by the State Medical Board. The proposed amendment, however, if its various provisions were lived up to, would practically recognize the practice of Christian Science as the practice of religion, and so far as the requirements of the sanitary code and the quarantine laws are concerned, would leave Christian Scientists and persons employing Christian Scientists subject to all the rules and regulations of the State Department of Health or local boards of health.

The observation of the quarantine laws and reporting of contagious diseases, after the fact is known, is in accordance with public health rules and regulations and has nothing to do with the practice of medicine. This is not so generally understood and was not made clear during consideration of the Christian Science bill in the last Assembly. In this connection it is important that there be a better understanding of the requirements of the Ohio law relative to the reporting of contagious diseases and the relation of Christian Scientists as individuals to this law. Section 4427 of the General Code reads as follows:

"Each physician or other person called to attend a person suffering from smallpox, cholera, plague, yellow fever, typhus fever, diphtheria, membranous croup, scarlet fever, or typhoid fever, or any other disease dangerous to the public health, or required by the State Board of Health to be reported, shall report to the health officer within whose jurisdiction such person is found, the name, age, sex and color of the patient, and the house and place in which such person may be found. In like manner, the owner, or agent of the owner, of a building in which a person resides who has any of the diseases herein named or provided against, or in which are the remains of a person having died of any such diseases, and the head of the family, immediately after becoming aware of the fact, shall give notice thereof to the health officer."

It is to be noted that the responsibility for the reporting of contagious and infectious diseases is placed not only upon the "physician," but on any "other person" called to attend such disease and including the head of the family. To all intents and purposes, the responsibility for the reporting of such diseases is placed upon every informed citizen. If a physician is called to attend a contagious case, of course, he must report it. If a Christian Scientist is called to attend a contagious case, he must report it. Without being called upon to attend such a case, obligation rests upon the owner, or agent of the owner, of a building and upon the head of the family. The law says nothing about diagnosis or ability to recognize such diseases with certainty, which is the basis of medical practice.

The requirements of this law present a very important factor in the consideration of the proposed Christian Science amendment. At the last session of the Legislature much time was spent in discussing the willingness and ability of Christian Scientists to report contagious diseases, the basis of the argument being that they cannot recognize them; therefore, they cannot report them. Since Christian Science is not at all based upon diagnosis, and this law makes no requirements as to diagnosis but specifically requires physicians or other persons called to attend contagious diseases, as well as the owner or agent of a building or the head of the family, when informed, to report them, the argument that singles out Christian Scientists as being unable to recognize such diseases, and, therefore, unable to report them, is refuted and falls to the ground by the very requirements of this Ohio Statute. Of course, it must be understood that the moral and legal responsibility of the citizen to protect himself, his family and the public from contagion or otherwise, and to comply with all existing laws, is in no way altered by the employment of a Christian Science adviser.

## A Bill

To create the Department of Medical Registration, to amend Sections 1289 and 1292 and to repeal Sections 1262 to 1267 inclusive of the General Code, relative to the State Medical Board.

*Be it enacted by the General Assembly of the State of Ohio:*

*Section 1.* There is hereby created a State Department of Medical Registration. The Governor, with the advice and consent of the Senate, shall appoint a well qualified person, not a member of any healing profession, who shall be the executive and administrative head of such department and shall have the title of Director of Medical Registration. Such Director may be removed by the Governor for cause upon the filing of written charges and opportunity for a hearing.

*Section 2.* The Director of Medical Registration shall serve for a term of four years and until his successor is appointed and qualified. He shall have all the powers and perform all the duties heretofore conferred and imposed by law upon the State Medical Board and the Secretary of the State Medical Board, except as may be hereinafter provided, and such further duties as may be provided in this act. Whenever the terms "State Medical Board" and "Secretary of the State Medical Board" appear in the General Code, they shall be construed to mean Director of Medical Registration. The Director of Medical Registration shall also succeed to and be possessed of all books, records, office supplies and material and all appropriations now or hereafter made to the State Medical Board.

*Section 3.* The compensation of the Director of Medical Registration shall be fixed by the Governor. Before entering upon the duties of his office he shall take and subscribe to an oath of office and give a bond in such amount and with such sureties as the Governor may approve. Such oath and bond shall be filed in the office of the Secretary of State. Suitable offices for conducting the business of the department shall be furnished and maintained by the State.

*Section 4.* The Director of Medical Registration may employ such experts, examiners, clerical and other assistants as may be necessary to perform properly the duties of his office, and fix their compensation. The Director and any of his force shall also be paid their necessary and actual traveling expenses incurred while engaged in the work of the Department. All salaries and other expenditures of the Department shall be paid upon the presentation of Vouchers signed by the Director of Medical Registration.

*Section 5.* The Director of Medical Registration shall appoint advisory committees representing each of the schools of practice, including the Allopathic or regular school, the Homeopathic school and the Eclectic school, the Osteopathic school, and may appoint such committees for the limited branches defined in Section 1274-1 of the General Code. Each committee shall consist of not more than three persons, and may be chosen from a list presented by the State associations or organizations representing the various branches. The tenure of any member of such advisory committee shall not be for a fixed term but may be terminated at the pleasure of the Director of Medical Registration.

*Section 6.* It shall be the duty of each advisory committee, when requested by the Director of Medical Registration, to assist him in the examination of applicants, the inspection of schools, and in determining the standing of schools, colleges, institutions or individuals giving instruction in the school of practice or limited branch represented by such committee. Such advisory committee shall also perform such other duties as the Director of Medical Registration may prescribe, but such co-operation shall be advisory only and the decision of the Director shall be final in all cases. Members of advisory committees shall receive five dollars for each day in which they are engaged in the work of the Department at the request of the Director, and in addition their actual and necessary expenses.

*Section 7.* That Sections 1289 and 1292 of the General Code be amended to read as follows:

*Sec. 1289.* Before he shall be admitted to an examination before the . . . *Director of Medical Registration* a person who desires to practice osteopathy shall pay a fee of twenty-five dollars to . . . *him* and file with . . . *him* such evidence of preliminary education as is required by law of applicants for examination to practice medicine or surgery, together with a certificate . . . showing that the applicant holds a diploma or a physician's osteopathic certificate from a reputable college of osteopathy as determined by . . . *the Director of Medical Registration.*

*Sec. 1292.* . . . *The Director of Medical Registration* may dispense with the examination of an osteopath, duly authorized to practice osteopathy in another State, a Territory or the District of Columbia, who wishes to remove from such State, Territory or District and reside and practice his profession in this State, upon his complying with the following conditions:

Such osteopath shall make an application on a form prescribed by the . . . *Director of Medical Registration*, pay a fee of fifty dollars and present a certificate or license issued by the proper board of such State, Territory or District; provided the laws of such State, Territory or District require of osteopaths practicing therein qualifications of a grade equal to those required of osteopaths practicing in Ohio, and equal rights are accorded by such State, Territory or District to osteopaths of Ohio holding a certificate from the . . . *Department of Medical Registration* who desire to remove to, reside and practice their profession in such State, Territory or District.

*Section 8.* That original Sections 1289, 1292 and Sections 1262 to 1267 inclusive, and 1290, 1291, 1293 and 1294 of the General Code be, and the same are hereby repealed.

## A Bill

To amend Section 1286 of the General Code relative to the practice of medicine.

*Be it enacted by the General Assembly of the State of Ohio:*

*Section 1.* That Section 1286 of the General Code be amended to read as follows:

*Sec. 1286. . . . No person, without a license from the Department of Medical Registration, shall use the words or letters, "Dr.," "Doctor," "Professor," "M. D.," "M. B.," or any other title in connection with his name which in any way represents him as engaged in the practice of medicine, surgery or midwifery in any of its branches, . . . within the meaning of this chapter, or shall examine or diagnose or prescribe, advise, recommend, administer or dispense a drug or medicine, appliance, application, operation or treatment of whatever nature for the cure or relief of a wound, fracture or bodily injury, infirmity or disease. The use of any such words, letters or titles in such connection or under such circumstances as to induce the belief that the person who uses them is engaged in the practice of medicine, surgery or midwifery shall be prima facie evidence of the intent of such person to represent himself as engaged in the practice of medicine, surgery or midwifery within the meaning of this chapter.*

*Section 2.* That original Section 1286 of the General Code be, and the same is hereby repealed.

## A Bill

To amend Sections 1295-5 and 1295-6 of the General Code, relative to the registration of nurses.

*Be it enacted by the General Assembly of the State of Ohio:*

*Section 1.* That Sections 1295-5 and 1295-6 of the General Code be amended to read as follows:

*Sec. 1295-5.* On and after January 1, 1916, no person shall practice nursing as a registered nurse in this State without first complying with the requirements of this act. All graduates in nursing shall either personally or by letter or proxy, present their diplomas to the nurses' examining committee for verification. Accompanying such diploma the applicant shall file an affidavit, duly attested, stating that the applicant is the person named in the diploma and is the lawful possessor of the same. The applicant shall state date of birth and the actual time spent in the study of nursing. If the committee shall find the diploma to be genuine and from a nurses' training school in good standing, . . . as defined by the State Medical Board, *and connected with a hospital or sanatorium*, . . . and the person named therein to be the person holding and presenting the same, and that said person has paid the fee as hereinafter provided for the examination of applicants, the committee shall issue a certificate to that effect signed by its secretary and chief examiner; such certificate, when left with the probate judge for record as hereinafter required, shall be conclusive evidence that its owner is entitled to practice nursing as a registered nurse in this State. All other persons desiring to engage in such practice in this State, shall apply to the nurses' examining committee for a certificate, and submit to the examination hereinafter provided, except that all students who were on May 1, 1915, matriculated in a training school for nurses located in the State of Ohio, recognized by the State Medical Board of Ohio, and who shall have graduated subsequent to May 1, 1915, and who shall file their diploma for registration prior to June 1, 1918, shall receive certificates as hereto-

fore provided. The applicant shall file with the Secretary a written application, under oath, on a form prescribed by the State Medical Board, and provide proof that said applicant is more than twenty-one years of age and of good moral character. The applicant shall file documentary evidence that before matriculating in a training school for nurses, said applicant received an education equivalent to that required for completion of the first year of a high school course of the first grade in this state, or four units of high school work, as defined in the school laws of Ohio, and evaluated by the entrance examiner of the State Medical Board in the same manner as provided in Section 1270 of the General Code of Ohio, and a diploma of graduation from a training school in good standing, . . . *as defined by the State Medical Board and connected with a hospital or sanatorium.* . . . At the time of application the applicant shall present such diploma with the affidavit that said applicant is the person named therein and is the lawful possessor thereof, stating date of birth, residence, the training school or schools at which said applicant obtained education and training in nursing, the time spent in each, the time spent in the study and training of nursing, and such other facts as the State Medical Board requires. If engaged in the practice of nursing, the affidavit shall state the period during which and the place where said nurse has been so engaged. . . .

*Sec. 1295-6.* If the committee finds the applicant possesses the credentials necessary for admission to the examination, that the diploma is genuine and was granted by a training school for nurses in good standing, . . . *as defined by the State Medical Board and connected with a hospital or sanatorium* and that the person named in the diploma is the person holding and presenting it and is of good moral character, the committee shall admit the applicant to an examination.

*Section 2.* That said original Sections 1295-5 and 1295-6 of the General Code be, and the same are hereby repealed.

## A Bill

To supplement Section 1286 of the General Code, by adding Section 1286-2, providing that the administration of an anesthetic by a registered nurse under the direction and in the immediate presence of a licensed physician shall not be considered the practice of medicine.

*Be it enacted by the General Assembly of the State of Ohio:*

*Section 1.* That Section 1286 of the General Code be supplemented by the addition of Section 1286-2 as follows:

*Sec. 1286-2.* Nothing in this chapter shall be construed to apply to or prohibit in any way the administration of an anesthetic by a registered nurse under the direction of and in the immediate presence of a licensed physician.

## A Bill

To supplement Section 1286 of the General Code, by adding Section 1286-1, providing that the practice of Christian Science shall not be considered the practice of medicine.

*Be it enacted by the General Assembly of the State of Ohio:*

*Section 1.* That Section 1286 of the General Code be supplemented by the addition of Section 1286-1 as follows:

*Sec. 1286-1.* Nothing in this chapter shall be construed to apply to persons practicing Christian Science, with or without compensation, provided they do not prescribe or administer drugs or medicine, nor perform surgical or physical operations, nor assume the title of, or hold themselves out to be, physicians or surgeons, and provided they shall not be exempt from the operation and enforcement of the sanitary and quarantine laws of the State.

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